

2.—That your petitioner's income and profits accruing and arising from [*here specify petitioner's trade or other source or sources of income or profits and the place or places at which such income or profits accrues or arise*] for the three years ending the thirty-first day of December 187 were a list is presented herewith. rupees, as will appear from the documents of which

3.—That such income and profits actually accrued and arose during a period of months and days. [*Here state the exact number of months and days in which the income and profits accrued and arose.*]

4.—That during the said three years your petitioner had no other income or profits.

Your petitioner therefore prays that he may be assessed accordingly, and that the value of the fee on this petition may be refunded [*or that he may be declared not to be chargeable under the said Act, and that the value of the fee on this petition may be refunded*].

(Signed) A. B.

Form of Verification.

I, A. B., the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

(Signed) A. B.

STATEMENT OF OBJECTS AND REASONS.

The present Income Tax Act (XVI of 1870) imposes a duty of $3\frac{1}{4}$ per cent. on all incomes of rupees 500 and upwards. The present Bill is intended to impose a duty of only $1\frac{1}{4}$ per cent. (or two pies in the rupee) and to affect no income less than rupees 750.

Besides these two important changes, the Bill introduces several minor modifications of the existing law.

In section 6, the word 'plying' has been substituted for 'trading,' so as to preclude a question which has been raised under the present law.

The Collector is empowered (section 13), in proper cases, to require officers of companies to attend and produce accounts.

The duty on interest on Government Securities will be deducted at the place where the interest is paid (sections 15, 16).

Owners of lands and houses occupying them are expressly made chargeable (section 22) in respect of their annual rackrent value, and a definition of 'rackrent' is inserted.

The Collector will be bound to serve the notice requiring returns only where the income is rupees 4,000 or upwards (section 23).

Every person served with such notices will be required to return his income during the three years ending 31st December next before the date of the notice, and to state the period during which such income actually accrued. •

The assessments will be made (section 27) on an average of the income for such three years, and the average will be computed upon the period during which the income actually accrued.

Legal practitioners will be excluded (section 36) from appearing on any petition or appeal under the Act. A similar provision was contained in Act No. XXXII of 1860.

Payment may be made henceforward (section 37) in two, instead of four, instalments.

All sums due under the Act will be recoverable as if they were arrears of land-revenue (section 39).

Power is given (section 40) to amend the assessment when the person assessed shows that his income has diminished, or gives up business, or dies, or becomes insolvent.

Lastly, orders made under the Act will be final, and the proceedings of the Collectors and Commissioners will not be removeable into any Court or be subject to revision.

R. TEMPLE.

The 10th March 1871.

WHITLEY STOKES,
Secy. to the Govt. of India.

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The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 17th March 1871, and was referred to a Select Committee with instructions to make their report thereon in a week:—

No. 13 of 1871.

A Bill for the survey of Steam Vessels in the Port of Rangoon.

WHEREAS it is expedient to provide for the survey of Steam Vessels in the Port of Rangoon; It is hereby enacted as follows:—

Preamble.

I.—Preliminary.

1. This Act may be called "The Rangoon Short title. Steamer Survey Act."

It extends only to the territories under the administration of the Chief Commissioner of British Local extent. Burma;

It shall come into force at the expiration of one month from the passing thereof. Commencement.

Interpretation-clause. 2. In this Act—

"Chief Commissioner" means the Chief Commissioner of British Burma;

"Surveyors" includes any surveyor acting alone when authorised by the Chief Commissioner under the provisions of this Act.

II.—Survey of Steamers.

3. Every Steam Vessel plying in the Rangoon river, or on any of the rivers or waters of British Burma, and every British Steam Vessel plying between Rangoon and any Port or Ports, shall be liable to be surveyed twice in every year, in the manner hereinafter prescribed. Certain Steam Vessels liable to be surveyed twice a year.

4. The Chief Commissioner may appoint fit and proper persons to be Surveyors for the purposes of this Act. Government to appoint Surveyors.

5. The said Surveyors, in the execution of their duties, may go on board any Steam Vessel liable to be surveyed under this Act, as soon as reasonably may be after the arrival of such Steam Vessel in the Port of Rangoon, and not so as unnecessarily to hinder the loading or unloading of such Steam Vessel, or to detain or delay her from proceeding on any voyage or service, and may inspect such Steam Vessel or any part thereof, and any of the machinery, equipments, or articles on board thereof. Authority to Surveyors to go on board Steamers for the purpose of surveying.

The Owner, Master and Officers serving on board such vessel shall be bound to afford to the Surveyors all reasonable facilities for such inspection or survey, and to afford them all such information respecting such vessel and her machinery and equipments, or any part thereof respectively, as they may reasonably require.

6. When any survey is made under this Act the Surveyors making such survey shall forthwith, if satisfied that they can with propriety do so, and on pay Surveyors to grant Certificate and Declaration when they can with propriety do so.

ment by the Owner or Master of the ship surveyed of the fees hereinafter mentioned, give him a Certificate and Declaration signed by them and framed as nearly as the circumstances of each case will admit in the Form set forth in schedule A hereto annexed.

7. No Officer of Customs shall grant a clearance nor shall any Pilot be assigned to any Steam Vessel, liable to be surveyed under this Act, which has not been duly furnished with a Certificate and Declaration under the provisions of this Act applicable to the voyage on which she is about to proceed, or the service on which she is about to be employed.

If any Steam Vessel liable to be surveyed under this Act leaves or attempts to leave the Port of Rangoon without such Certificate and Declaration, any Officer of Customs or any Pilot on board such Vessel may detain her until she is duly furnished with such Certificate and Declaration.

8. The Chief Commissioner may give special direction to the Surveyors under this Act for the survey by them of any British Steamer lying in the Port of Rangoon and plying between Rangoon and any other Port or Ports, and the provisions of this Act shall apply (so far as the same are applicable) to every vessel so specially directed to be surveyed, and the Owner, Master and Officers thereof.

9. The Chief Commissioner may frame Rules consistent with this Act as to—

(a) the manner in which the surveys shall be made, (b) the times and places of such surveys, and (c) the duties of the Surveyors. Chief Commissioner may make Rules as to mode and time of conducting survey.

10. For every survey made under this Act the Owner or Master of the Steam Vessel surveyed shall pay to each of the Surveyors making the same a fee, calculated on the tonnage of the vessel according to the rates in schedule B hereto annexed. Fees to be paid for every survey made.

11. Each Certificate and Declaration granted by Surveyors under this Act shall be hung up, and remain at all times suspended in some conspicuous part of the vessel for which the same is granted, where the same may be easily read. Certificates to be hung up in conspicuous part of vessel.

12. No Certificate or Declaration shall be in force for the purposes of this Act after the expiration of six months from the date thereof; provided that, if any Steam Vessel is absent from the Port of Rangoon when her Certificate and Declaration expire, no penalty shall be incurred for the want of a Certificate and Declaration, until she first begins to ply, or is about to ply after her next subsequent return to the Port of Rangoon. Certificates to be in force only six months and to be delivered up when expired or revoked.

The Chief Commissioner or any Officer appointed by him for that purpose, may require any Certificate and Declaration which has expired or has been revoked or cancelled to be delivered up as may be directed. Provision in case of vessels absent from Port when Certificate expires.

13. The Chief Commissioner or any Officer

Certificate and Declaration may be cancelled by Government.

appointed or authorized by him for that purpose, may revoke and cancel any Certificate and Declaration granted under this Act in any case in which he has reason to believe—

(1) that the Certificate and Declaration of the sufficiency and good condition of the hull, equipments, and machinery of any Steam Vessel, or either of them have been fraudulently or erroneously given or made, or,

(2) that such Certificate and Declaration have otherwise been issued upon false or erroneous information, or,

(3) that since the giving and making of such Certificate and Declaration the hull, equipments, or machinery of such ship have sustained any injury or are otherwise insufficient.

And in every such case the Chief Commissioner or such Officer as last aforesaid may, if he thinks fit, require the Owner or Master to have such Steam Vessel again surveyed as herein provided.

14. If any Steam Vessel is surveyed under

Power to order a second survey.

the provisions of this Act, and if the Surveyors decline to give any Certificate or Declaration or give a Certificate or Declaration with which the Owner or Master of the Steam Vessels is dissatisfied, the Chief Commissioner may, on the application of such Owner or Master, appoint two other competent Surveyors to survey the said Steam Vessel.

The Surveyors so appointed shall forthwith survey the said Steam Vessel, and shall either decline to give any Certificate and Declaration, or shall give such Certificate and Declaration as under the circumstances may seem to them proper.

Every survey made under this section shall be made subject to all the provisions and rules both as to the payment of fees and otherwise which are applicable to surveys made in ordinary cases under this Act.

If the Surveyors appointed under this section unanimously refuse to give any Certificate and Declaration or agree as to the terms of their Certificate and Declaration, such refusal or such Certificate and Declaration shall be final and conclusive; but if they do not agree, the refusal originally made, or the Certificate and Declaration originally granted by the Surveyors who surveyed the said Steam Vessel in the first instance, shall remain in force.

III.—Penalties.

15. Any person refusing access to any Sur-

Penalty for hindering them in making the survey or withholding required information.

veyors under this Act, or otherwise hindering them in the performance of their duty, or refusing or neglecting to give any information which may reasonably be required of him, and which he has in his power to give, shall be liable for each offence to

fine not exceeding five hundred rupees, or to imprisonment for a term not exceeding one month.

16. If any Steam Vessel liable to be surveyed

Leaving Rangoon without Certificate and Declaration.

under this Act leaves or attempts to leave the Port of Rangoon without such Certificate and Declaration as is mentioned in section seven, the Owner or Master of such Vessel shall, for each offence, be punished with fine not exceeding one thousand rupees.

17. If the Commander or any other Officer of a

Master or Officer who is a licensed Pilot attempting to take his ship out of Rangoon without a proper Certificate liable to lose his license.

Tug Steamer or of any other Steam Vessel, liable to be surveyed under this Act, is a licensed Pilot and leaves or attempts to leave the Port of Rangoon in such Tug Steamer or Steam Vessel without such Tug Steamer or Steam Vessel being duly furnished with a Certificate and Declaration under the provisions of this Act, applicable to the voyage on which she is about to proceed, or the service on which she is about to be employed, such Commander or other Officer shall be liable to have his license as a Pilot taken away from him entirely or suspended for any period by the Chief Commissioner as the Chief Commissioner may see fit to order.

18. Any Surveyor demanding or receiving directly or indirectly from the

Penalty for Surveyor who receives fees, &c., for making a survey.

Owner, Master, or Officer of any ship surveyed by him under the provisions of this Act, any fee or remuneration otherwise than as provided by this Act, shall be liable to dismissal, in addition to any other penalty to which he may by law be liable.

19. The Owner or Master of every Steam

Neglect to hang up Certificate and Declaration.

Vessel in which the Certificate and Declaration granted under this Act is not hung up and does not remain in manner provided by section eleven, shall, for each offence, be punished with fine not exceeding one hundred rupees.

20. Any Owner or Master or other person who

Refusal to comply with requirements of section 12.

neglects or refuses to comply with any requirement made under section twelve shall be punished with fine not exceeding one hundred rupees for each offence.

21. Any case arising out of this Act may be

Offences under this Act by whom to be tried. tried by any Officer having the full powers of a Magistrate within whose jurisdiction the offence may have been committed, or by any Police Magistrate of the town of Rangoon.

The provisions of section fifty-five of Act No. XXII of 1855 (*for the regulation of Ports and Port dues*) are hereby extended to all fines imposed under this Act, and all fees due under section ten shall be recoverable as if they were fines.



The Gazette of India.

Published by Authority.

CALCUTTA, SATURDAY, MARCH 25, 1871.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 19.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 10th March 1871, and was referred to a Select Committee with instructions to make their report thereon in a fortnight :—

No. 8 of 1871.

THE LAND IMPROVEMENT BILL, 1871.

CONTENTS.

PREAMBLE.

CHAPTER I.—*Preliminary.*

Sections.

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Local extent.
Commencement.
2. Repeal of enactments.
3. Interpretation-clause.

CHAPTER II.—*Advances of Money for making Improvements.*

4. Application for advance.
5. Procedure of Collector on receiving application.
6. When Collector may grant certificate.
7. Notice to landlord.
8. Proof of service of notice.
9. Certificate when granted.
10. Contents of certificate.
11. Advance of money by Collector.

Sections.

12. Advances recoverable as arrears of land-revenue.
13. Advance not to raise presumption of ownership.

CHAPTER III.—*Supplementary Powers.*

14. Power to fix aggregate amount of advances.
15. Power to make rules.
Schedule.

A Bill to consolidate and amend the law relating to advances of money by the Government for the construction of permanent works of agricultural improvement.

WHEREAS it is expedient to consolidate and amend the law relating to advances of money by the Government for the construction of permanent works of agricultural improvement; It is hereby enacted as follows :—

CHAPTER I.—*Preliminary.*

1. This Act may be called "The Land Improvement Act, 1871":

It extends only to the territories respectively under the government of the Lieutenant Governors of the North-Western Provinces and the Panjāb and under the administration of the Chief Commissioners of Oudh, the Central Provinces and British Burma;

And it shall come into force on the passing thereof.

- Commencement.
2. The enactments mentioned in the schedule hereto annexed shall be repealed to the extent specified therein.

Interpretation-clause.

3. In this Act—

“Land” means land used for agricultural purposes, or waste land which is cultivable;

“Land.”

“Rent” means whatever is payable or deliverable for the use or occupation of land;

“Rent.”

“Landlord” includes a superior, mesne or immediate proprietor and any person entitled for the time being to receive rent directly from a tenant;

“Landlord.”

“Tenant” means any person actually using or occupying land, and liable to pay or deliver rent therefor;

“Tenant.”

“Improvement.”

“Improvement” means:—

1st, wells, tanks and other works for the storage, supply, or distribution of water for agricultural purposes, or the preparation of land for irrigation;

2nd, works for the drainage of land;

for the reclaiming of land from rivers, or from other waters;

for the protection of land from floods, or from erosion or other damage by water;

3rd, the reclaiming, clearing, and enclosing of waste lands for agricultural purposes;

4th, the clearing of the land from stones or other obstacles to cultivation;

5th, the renewal or re-construction of any of the foregoing works, or such alterations therein, or additions thereto, as are not required for maintaining the same, and which increase durably their value; and

“Collector” means the Collector of land-revenue, or the Deputy Commissioner, or any officer

“Collector.”

authorized by the Local Government to exercise the powers of a Collector under this Act.

CHAPTER II.—*Advances of Money for making Improvements.*

4. Any landlord or tenant desiring to make an improvement in any land

Application for advance.

of which he is in possession or occupation, and to obtain an advance of money to enable him to make such improvement, may make an application to the Collector for such advance, stating at the same time the nature and amount of the security which the applicant proposes to furnish for the repayment of such advance.

5. On receiving such application, the Collector

Procedure of Collector on receiving application.

shall make such inquiry as he deems necessary to ascertain the propriety or otherwise of making the advance.

When Collector may grant certificate.

6. If the Collector be satisfied—

(a) that the improvement will immediately or prospectively increase the annual value of the land to be improved by an amount exceeding the largest sum to be charged in any one year under this Act for the repayment of the advance, and

(b) that the proposed security is adequate,

he may grant to the applicant a certificate sanctioning an advance of money for the purpose of making the improvement.

7. If (a) the applicant is a tenant not having

Notice to landlord.

the right to transfer his interest in the land without the consent of the landlord,

or (b) if the applicant is a tenant having such right, but the amount of the advance applied for exceeds the value of the said interest,

and if, in either of such cases, the Collector is not satisfied that the proposed security is adequate,

the Collector shall serve notice of the application on the landlord personally or upon his agent authorized to receive service on his behalf.

8. No such notice shall be deemed to have

Proof of service of notice.

been served unless the service is acknowledged by the landlord or his agent, or the fact of its having been made be otherwise established to the satisfaction of the Collector.

9. If the landlord does not within one month

Certificate when granted.

after such service signify in writing to the Collector his dissent to the making of the proposed improvement, or if he dissents but, after the Collector has explained his reasons for thinking the improvement desirable, withdraws in writing such dissent, the Collector may grant the certificate.

Contents of certificate. 10. The certificate shall

(a) state the amount of the advance;

(b) state the conditions under which it is to be made and recovered;

(c) specify the land or interest in the land (if any) which, in the event of any sum not being repaid by the person receiving the advance, shall become chargeable for the repayment of the same; and

(d) state the nature and amount of any other security furnished.

11. When such certificate has been granted,

Advance of money by Collector.

the Collector may make the advance therein mentioned.

12. All sums stated in such certificate shall,

Advances recoverable as arrears of land-revenue.

when they become due, be recoverable from the person to whom the advance was made, or from any person who has become security for the repayment thereof, as if they were arrears of land revenue due by the person to whom the advance was made or by his security.

If any such sum cannot be so recovered, it shall be recoverable as if it were an arrear of revenue due on the land specified in the said certificate:

Provided that when the person to whom the advance was made is a landlord or a tenant having a right to transfer his interest in the land without the consent of the landlord, the interest of no person, other than such landlord or tenant, in the said land shall be sold under this section.

13. The making of an advance under this Act

Advance not to raise presumption of ownership.

to a tenant shall in no case be deemed to confer upon him any right to or interest in the land in respect of which the advance is made, or to alter the respective rights or interests of landlord and tenant in such land.

CHAPTER III.—*Supplementary Powers.*

14. The Governor General in Council shall determine, from time to time, the aggregate amount which may be applied by the Local Government for the purpose of making advances under this Act, or which may be permitted to remain outstanding and not repaid or discharged at any one time, on account of such advances.

15. The Local Government, with the previous sanction of the Governor General in Council, may make rules consistent with this Act in all matters connected with its enforcement, and may, from time to time, alter and add to the rules so made.

Such rules shall, among other things, make provision:—

1st, for prescribing the manner in which applications may be made by persons desiring to obtain advances from the Collector for making improvements, and in which inquiries relating to such applications shall be conducted;

2nd, for prescribing the forms which are to be used in any proceeding under this Act;

3rd, for determining the conditions under which such advances may be made, and under which they are to be repayable;

4th, for securing the due expenditure of such advances, and the due execution, inspection, and maintenance, during the term fixed for the repayment of the advance, of the improvements for which the advances are made;

5th, for keeping and auditing the accounts of such advances;

6th, for making local enquiries or otherwise carrying out the provisions of this Act.

Any sums expended by the Collector in accordance with rules made under this section shall be recoverable as if they were part of the advance in connection with which they were made.

SCHEDULE.

Bengal Regulations.

Number and Year.	Title.	Extent of repeal.
II. 1793.	A Regulation for abolishing the Courts of Maal Adawlut or Revenue Courts, and transferring the trial of the suits which were cognizable in those Courts to the Courts of Dewanny Adawlut; and prescribing rules for the conduct of the Board of Revenue and the Collectors.	Sections twenty-three and forty-four.
XIV. 1793	A Regulation for the recovery of arrears of the public revenue assessed upon the lands, from Zemindars, independent Talookdars, and other actual proprietors of land, and farmers of land holding farms immediately of Government.	Section forty.

SCHEDULE —continued.

BENGAL REGULATIONS —continued.

Number and Year.	Title.	Extent of repeal.
III. 1794	A Regulation for exempting proprietors of land (with certain exceptions) from being confined for arrears of revenue; and for prescribing the process by which Tehsildars are to demand payment of arrears; and for enabling the Collectors to recover from Native Officers employed under them, public money or papers which they may embezzle or retain; and for expediting the trial of causes relating to the public revenue or the rents of individuals.	Section eight.
VI. 1795	A Regulation prescribing the process by which the Collector and the Tehsildars are to realize the public revenue payable from the lands in the province of Benares.	Section forty-six.
XLVI. 1795	A Regulation for extending to the Province of Benares, Regulation XXXIII, 1793, entitled, "A Regulation for re-enacting, with Modifications, the Rules passed on the 11th February and 21st October, 1791, for repairing the Embankments kept in Repair at the public Expense; and for encouraging the digging of Tanks or Reservoirs and Watercourses, and making Embankments.	The whole.
XLIV. 1803	A Regulation prescribing Rules for the Repair of Watercourses, Wells, and of other Works constructed for the Improvement of the Cultivation of the Lands, and kept in Repair at the public Expense, in the Provinces ceded by the Nawaub Vizier to the Honourable the English East India Company, and for affording Encouragement to Individuals to construct such Works.	The whole.

STATEMENT OF OBJECTS AND REASONS.

The object of this Bill is to consolidate and amend the law relating to advances of money by the Government for the construction of works of agricultural improvement.

Almost from the commencement of the British rule in India, the Government has recognized the duty of making advances, usually called *takkavi*, to the owners and occupiers of land, for the purpose of promoting the construction of minor works of agricultural improvement, not requiring much engineering skill or the employment of large numbers of labourers, but of such a description that they can be designed and carried out by the people themselves. The existing law upon the subject is contained in the Regulations mentioned in the schedule to the Bill. It is provided by these enactments that *takkavi* advances shall be recoverable by the same processes which are applicable to the recovery of arrears of land-revenue, and the security for repayment is thus rendered complete.

The provisions of the Regulations in question are, in some respects, hardly suited to the circumstances of the present time. The consolidation of the existing law upon the subject is necessary, and it is desirable to take the opportunity of amending the law where it is defective.

The system under which *takkavi* advances have long been made in India for permanent agricultural improvements, and which it is proposed to continue under the present Bill, is identical in principle with that which has been carried out, with admirable results, in the United Kingdom, by means of the Land Improvement Acts, and it is believed that this principle may properly receive a wider and more systematic development in India than has hitherto been given to it.

The Bill defines the classes of works for which the assistance of the Government may be granted; it authorizes the Local Governments, with the previous sanction of the Governor General in Council, to make rules prescribing the manner in which applications for advances may be made; the conditions under which advances may be granted, and under which they will be re-payable; for securing the due expenditure of the advances, the proper execution, inspection and maintenance of the works for which the advance was made; and for the keeping and auditing of accounts.

Long experience has shown that the system of granting advances of this description cannot throw any financial burden on the public, for no advance can be made unless the reproductive character of the work is certain, while the security for the repayment, both of the capital and interest, will be in every case complete.

The Bill refers only to advances for works of permanent agricultural improvement. A vicious system formerly prevailed in some parts of India, under which nominal advances, called *takkavi*, were often made to liquidate balances due on account of Government revenue, and for other temporary purposes. This system had nothing in common with that described in the present Bill.

JOHN STACHEY.

The 16th January 1871.

WHITLEY STOKES,
Secy. to the Govt. of India.

The following Bill, and Statement of Objects and Reasons accompanying it, are published for general information, by order of His Excellency the Governor General, under the 19th of the Rules for the Conduct of Business at Meetings of the Council of the Governor General of India for the purpose of making Laws and Regulations.

No. 10 OF 1871.

A Bill for the levy on Land of rates to be applied to provincial local purposes in the North-Western Provinces.

WHEREAS it is expedient to provide, in the North-Western Provinces of the Presidency of Fort William, for the levy on land of rates to be applied to local purposes; It is hereby enacted as follows:—

I.—Preliminary.

1. This Act may be called "The North-Western Provinces Local Rates Act, 1871."

Short title.

It extends only to the territories subject to the Lieutenant-Governor of the North-Western Provinces,

and it shall come into force on the first day of April 1871.

Interpretation-clause. 2. In this Act—

"Commissioner" means Commissioner of a Division;

"Collector" means the Head Revenue Officer of a district;

"Division" and "district" mean the tracts of country ordinarily known by such names for purposes of civil administration;

"Land" means land used for agricultural purposes, or waste land which is cultivable.

"Rent" means whatever is payable or deliverable for the use or occupation of land.

"Tenant" means any person using or occupying land, and liable to pay or deliver rent therefor.

"Landlord" means the person in possession of an 'estate' or a share of an estate, or of the rents and profits of such estate or share.

"Estate" means all or any part of a village separately assessed to the payment of land revenue, or of which the land revenue has, either wholly or in part, been released, compounded for, redeemed, or assigned.

"Annual value" means as follows:

- (1). In cases in which the settlement of the land-revenue is liable to periodical revision, it means double the amount of the land-revenue for the time being assessed on an estate;
- (2). In cases in which such settlement is not liable to such revision, or in which the land-revenue has been wholly or in part, released, compounded for, redeemed or assigned, it means double the amount which, if the settlement were liable to such revision, would be assessable as land-revenue on the estate.

"Local purposes" means—

- (1). The construction, repair and maintenance of roads and communications;
- (2). The maintenance of the police;
- (3). The construction and repair of school-houses, the maintenance and inspection of schools, and the training of teachers;
- (4). The construction and repair of hospitals, dispensaries, lunatic asylums, markets, wells, and tanks; the payment of all charges connected with the purposes for which such buildings or works have been constructed, and any other local works likely to promote the public health, comfort or convenience.

II.—Rates on Land in Estates in Districts of which the Settlement is liable to Revision.

3. Every estate situate in any district in which the term of the settlement of the land-revenue made under Regulation IX of 1833 has expired, shall be liable to the payment of such rate,

Rate on estates where the settlement has expired.

not exceeding five per cent. on its annual value, as the Lieutenant-Governor from time to time imposes.

Such rate shall be paid by the landlord independently of, and in addition to, any land-revenue assessed on the estate.

Provided that in estates in which, before the passing of this Act, provisional engagements have been taken from the landlord for the payment of the land-revenue and cesses in one consolidated sum, and in which it appears to the Lieutenant-Governor inexpedient to cancel such engagements, one-eleventh part of such sum shall be deducted on account of such cesses, and shall be treated in all respects as if it were a portion of a rate levied under the former part of this section.

III.—*Rates on Land in Estates of which the Land Revenue is not liable to periodical Revision.*

4. Every estate situated in a district of which the land-revenue is not liable to periodical revision, shall be liable to the payment of such rate as the Lieutenant-Governor from time to time imposes not exceeding two annas for each acre under cultivation or which has been cultivated within the three years next before the assessment of the rate.

5. The rate shall be paid by the landlord independently of and in addition to any land-revenue assessed on the estate, and in addition to the cess levied now on account of roads.

6. The Lieutenant-Governor shall, from time to time, prescribe rules for ascertaining the area of the cultivated land assessable under section four.

7. The landlord may recover, from every tenant paying rent to him in respect of land on which such rate has been assessed, and for the payment of which the landlord is liable, an amount equal to one-half of the rate assessed on the land held by such tenant.

8. The Lieutenant-Governor may from time to time make rules consistent with this Act, for determining the cases in which a landlord shall be entitled to recover, from tenants holding at fixed or beneficial rates of rent, the whole or any portion of the rate assessed on the land held by such tenants.

IV.—*Manner in which the Rates are to be expended.*

9. The proceeds of all rates levied under this Act shall be carried to the credit of a general fund.

10. The Local Government shall, from time to time, make an assignment from such fund of the amount to be applied in each district for expenditure for local purposes.

Such assignment shall not be less than seventy-five per cent. of the total sum assessed under this Act in such district.

11. In the case of works which benefit more districts than one, the Local Government may determine what proportion of the ex-

pense of the work shall be borne by each of the districts benefited thereby, and such proportion shall be payable out of the assignments made as aforesaid to such districts respectively.

12. Any portion of such assignment remaining unexpended at the end of the financial year in which the assignment was made shall, unless the Local Government otherwise specially directs, be held to be a portion of the general fund mentioned in section nine.

13. Accounts of the receipts on account of all rates levied under this Act, and of the receipts and expenditure of such assignment, shall be kept in each district.

The details of such accounts shall, at all reasonable times, be open to the inspection of the Committee appointed under section fourteen.

An abstract of such accounts shall be prepared annually in English and in the Vernacular language of the district, and shall be open, at all reasonable times, to public inspection at suitable places within the district without the payment of any fee.

An abstract of such accounts shall also be published annually in the local official Gazette.

14. The Local Government shall appoint, in each district, a Local Committee, consisting of not less than six persons, for the purpose of assisting in the determination of the objects to which any money made available in accordance with this Act for expenditure within the district for local purposes shall be applied, and in the supervision and control of the expenditure incurred.

The Local Government shall, from time to time, prescribe the manner in which the Members of such Committee shall be appointed or removed, and shall define the functions and authority of such Committee: Provided that not less than one-half of the Members of such Committee shall be persons not in the service of the Government, and owning or occupying land in the district, or residing therein.

V.—*Miscellaneous.*

15. Suits for the recovery from co-sharers, tenants or others of any sum on account of any rate imposed under this Act, and all suits on account of illegal exaction of such rate, or for the settlement of accounts, shall be cognizable by the Collector as if such suits had been included among the suits mentioned in section twenty-three of Act No. X of 1859 and in section one of Act No. XIV of 1863,

and appeals from decisions in such suits shall be cognizable in accordance with the provisions of Act No. X of 1859 and Act No. XIV of 1863.

16. In matters connected with the assessment and collection of any sum leviable under this Act, appeals to the Commissioner from the orders of the Collector, and appeals to the Board of Revenue from the orders of the Commissioner, shall be presented within thirty days from the date of the order.

17. The Lieutenant-Governor may invest any officer subordinate to a Collector with all or any of the powers of a Collector for the purposes of this Act. The orders passed by any officer so invested shall be subject to revision by the Collector, but shall be appealable to the Commissioner only.

18. In case of revision of the land-revenue of any estate in consequence of alluvion or diluvion, rates assessed under this Act shall also be liable to revision.

19. All sums due on account of any rate imposed under this Act shall be recoverable as if they were arrears of land-revenue due on the land on account of which the rate is payable.

20. The Lieutenant-Governor may, by notification from time to time,

(a) prescribe by what instalments and at what times such rate shall be payable, and by whom it shall be collected and paid to Government;

(b) make rules consistent with this Act for the guidance of officers in matters connected with its enforcement;

(c) exempt any portion of the territories within its jurisdiction from the operation of this Act, or exempt any estate from liability to pay the whole or any part of any rate under this Act.

Every notification under this section shall be published in the *Government Gazette, North-Western Provinces*.

STATEMENT OF OBJECTS AND REASONS.

The Resolution of the Government of India in the Financial Department, dated 14th December 1870, confers upon Local Governments the charge of certain Departments of the public service specially connected with local requirements, and reduces the amount of the grants hitherto made for those services from the Imperial Revenue. With the object of supplementing those grants, and of providing the means of carrying out many works of local improvement which are urgently required, but for which under existing circumstances no assignments can be made from Imperial Funds, the Lieutenant-Governor of the North-Western Provinces desires to impose additional rates on the land. The present Bill is intended to give the necessary powers to the Local Government.

In districts temporarily settled, a rate of five per cent. on the annual value of every estate has been hitherto imposed, on the revision of the assessment of the Government demand on account of land-revenue, made under Regulation IX of 1833. It is now proposed to impose this rate on all such estates of which the settlement has expired, without waiting for the regular revision of the assessment.

In the permanently settled districts, a rate of one per cent. on the Government demand on account of land-revenue is now paid by landlords. The amount realized by this rate is altogether inadequate to meet the local requirements of these districts; and it is therefore proposed to levy a further rate of two annas on each acre of cultivated land, in all estates of which the land-revenue is

not liable to periodical revision, giving the landlord power to recover one-half the rate levied from the tenants holding under him.

J. F. D. INGLIS,

The 10th March 1871.

WHITLEY STOKES,
Secy. to the Govt. of India.

The following Bill, and Statement of Objects and Reasons accompanying it, are published for general information, by order of His Excellency the Governor General, under the 19th of the Rules for the Conduct of Business at Meetings of the Council of the Governor General of India for the purpose of making Laws and Regulations:—

No. 11 of 1871.

A Bill for imposing a duty on certain trades and dealings in the North-Western provinces and Oudh.

Whereas it is expedient to impose a duty on certain trades and dealings in the North-Western Provinces and Oudh; It is hereby enacted as follows:—

1. This Act may be called "The License Tax (North-Western Provinces and Oudh) Act."

It extends to the territories respectively subject to the Lieutenant-Governor of the North-Western Provinces and the Chief Commissioner of Oudh, except such districts or tracts as the Local Government may from time to time, permanently or for a fixed period, exempt from its operation;

And it shall come into force on the first day of April 1871.

Interpretation clause.

"District" means the tract of country ordinarily known by such name for purposes of Civil Administration.

"Collector of the District" means the Head Revenue Officer of a District.

"Collector" means any officer subordinate to the Collector of the District invested with all or any of the powers of a Collector of a District.

3. Every person falling under any of the heads specified under Schedule A hereto annexed, and carrying on (whether on behalf of himself or any other person) his trade or dealing, shall be required to pay a duty fixed by the Local Government not exceeding the duty specified in Schedule B hereto annexed.

4. For the purposes of this Act, trades and dealings shall be divided into the three classes enumerated in Schedule A.

5. In all cases of doubt or objection, the Collector of the District shall decide the class, if any, under which any person shall fall. There shall be no appeal from such decision.

6. On or before the first day of April in this year and the first day of January in every subsequent year, the Collector shall make a list of the persons liable to pay duty under this Act, and such list shall state the trade or dealing of each of the persons therein named, and the duty payable by them.

All lists made under this section shall be filed in the office of the Collector.

The Collector shall, at or about the same time, issue a notification, in such form as the Local Government directs, showing the classes assessable under this Act, and the rate at which each class is assessed, with such other information as the Local Government may direct.

The notification shall be published in the principal mahallas or ganjes of all towns, and in the chaupál, or other public place, in all villages concerned.

7. So soon as may be practicable after the issue of such notification, notice shall be served on each person assessed: provided that in any year it shall not be necessary that such notice shall be served on any person who may have been assessed under this Act in the year immediately preceding.

Such notice shall contain—
the name and designation of the person assessed,
the class under which he falls,
the amount payable,
the date or dates on which payment is to be made,
the mode and place of payment,
the penalty incurred by failure to make payment of the amount on the given date,

and shall notify that if the person so served continues his trade or dealing, payment of the amount specified in the notice must be made within thirty days next after the first day of January of each successive year.

8. Payment of the prescribed duty shall in all cases be made to the Collector within the district in which the trade or dealing is carried on: provided that in all cases where the trade or dealing is carried on in more than one district, payment shall be made in one district only, under the rules prescribed in this behalf by the Local Government.

9. The Collector shall thereupon grant a license to the person paying such duty. Such license shall be signed by the Collector or by any officer whom he authorises in this behalf, and shall specify—

- (1). The date of the grant thereof.
- (2). The name and trade or dealing of the licensee.
- (3). The sum paid for the license.
- (4). The place or places where the licensee intends to carry on his trade or dealing for the ensuing year.

10. Receivers or managers appointed by any Court in India, and the Courts of Wards, shall be chargeable under this Act in respect of any trade or dealing, of which the

income is officially in their possession or under their control.

11. When any trustee, guardian, curator, committee, or agent is assessed under this Act in such capacity, or when any receiver appointed by any Court or Court of Wards is assessed under this Act, every person and Court so assessed may, from time to time, out of the money coming to his or its possession as such trustee, guardian, curator, committee, or agent, or as such receiver or Court of Wards, retain so much as is sufficient to pay the amount of the assessment.

Every such person or Court is hereby indemnified for every retention and payment made in pursuance of this Act.

12. The Collector of the District may require any Municipality constituted under Act No. XXVI of 1850, Act No. XVIII of 1864, or Act No. VI of 1868 to furnish, within a period to be specified under the orders of the Local Government, returns showing the names and numbers of persons assessable under this Act resident within the limits of such Municipality, together with the class under which they fall and the amount payable by them.

If the Municipality fails within the period prescribed to make such returns, or if it make such returns, but the Collector of the District has reason to doubt their accuracy, he may at any time cause a return showing the names and numbers aforesaid to be prepared in such manner as may be prescribed by the Local Government.

13. When the return mentioned in section twelve has been furnished or prepared, notice shall be served on the Municipality calling on it to pay to the Collector of the District, within a period to be specified in the notice, a sum calculated on such return in accordance with the provisions of this Act.

Any Municipality may, subject to the provisions of section fifteen, appropriate all or any part of its revenues to the payment of the sum assessed upon it under this section, or raise such further sums in addition to its existing revenue as may be needful for such payment: provided that such further sums shall be raised in accordance with the Act under which it is constituted.

14. Every person not resident within the limits of a Municipality who is found, after expiry of the period specified in the notice to be served under section seven, carrying on any trade or dealing specified in Schedule A without possession of a license under this Act,

and every person required by this Act to take out a license who without reasonable excuse neglects or refuses to produce and show his license when required so to do by an officer empowered in writing by the Collector to make such requisition,

shall be punished on conviction before a Magistrate with a fine amounting to twice the sum payable by him under Schedule B.

There shall be no appeal from the order of a Magistrate under this section.

15. Sums assessed upon Municipalities under Assessments to be a section thirteen shall be deemed, after payment of police charges, a first charge on their revenues, anything in Act No. VI of 1868 notwithstanding.

16. All arrears due under this Act may be recovered as if they were fines.

17. Nothing in this Act applies to persons being itinerant vendors only.

18. The Local Government may from time to time by notification exempt from the operation of this Act,

(a) any portion of the territories under his Government,

(b) alter or add to Schedule A,

(c) make rules consistent with this Act for the guidance of officers in all matters connected with its enforcement.

All notifications under this section shall be published in the local official Gazette, and no notification under clause b shall take effect until the first day of April next after its publication.

SCHEDULE A.

CLASS I.

Bankers.

Wholesale dealers in country produce.

CLASS II.

Cloth-sellers.

Metal Vessel-sellers.

Fuel-sellers (Talwalla).

Chowdrees.

Agents.

Letters-out of Carriages, Buggies, &c.

Contractors.

CLASS III.

Sellers of Sweetmeats.

" Tobacco.

" Grocery and Spices.

" Salt.

" Pán.

" Bracelets.

" Grain and Provisions.

" Butcher's-meat.

" Perfumes.

" Jewellery.

" Gold and Silver Laces, Threads &c.

" Ghee.

" Lime.

" Articles made of stone: including Grindstones and Mortars.

" Miscellaneous Articles of European manufacture.

" Silk.

" Shoes and Boots.

" Drugs and Medicines.

" Petty Timber Dealers.

" Blankets, Felt, &c.

" Durrees.

" Leather.

" Books.

" Manufactured Iron.

" " Wood.

Letters-out of Ekkas.

" " Camels.

Brokers.

Weighmen.

SCHEDULE B.

Every person who shall exercise any trade, dealing, or profession, for gain or profit, for any period between the 1st of April in one year and the 1st of April in the succeeding year, shall pay for such period:—

If belonging to Class	I	...	Rs.	6
"	II	...	"	4
"	III	...	"	2

STATEMENT OF OBJECTS AND REASONS.

This Bill purports to impose a duty on trades, dealings and professions in the North-Western Provinces and Oudh, and its object is to confer upon the Government of those territories the powers necessary to raise a part of the sum required for local expenditure.

The trades, dealings and professions to be taxed are enumerated in schedule A. The duty will be levied on them if carried on in the North-Western Provinces or Oudh. Section eighteen gives the Local Government power to alter this schedule, by notification in the Gazette. It has been considered necessary to reserve this power because the schedule, as at present framed, may be found hereafter to have omitted trades, dealings, or professions, which should be included; or, on the other hand, it may be found necessary to exempt trades, dealings or professions enumerated in it, or to alter the classification.

The schedule has been framed so as to include only trades, dealings and professions which, it is believed, will everywhere be competent to pay the rate assessed. Exemption is restricted to the case of persons having no fixed place for carrying on trade, such as hawkers and pedlars.

Trades, dealings and professions have been divided into three classes; the maximum rate to be charged on each class being six, four, and two Rupees per annum respectively. The amount assessed on any person will not be calculated on his supposed income or profits, but according to the class into which the trade, dealing, or profession he carries on, may fall.

The power of determining the class under which, in doubtful cases, any person may fall is reserved by section five to the Collector without appeal.

It has been provided by section eight that payment shall, in all cases, be made to the Collector of the District in which the trade, dealing, or profession is carried on, and when it is carried on in more than one District, the District in which payment is to be made, is to be determined by the Lieutenant-Governor.

Municipalities constituted under Act VI of 1868 will be assessed in a lump sum, based upon returns, to be furnished by the Municipality, of persons assessable under the Act. If the Collector has reason to doubt the accuracy of this return, power is given to him by section twelve to cause a return to be prepared under his own orders.

Section thirteen gives Municipalities so assessed the power to raise the sum required by any of the means enumerated in the Act under which it is constituted.

The remaining sections of the Bill do not require notice.

J. F. D. INGLIS.

The 1st March 1871.

WHITLEY STOKES,
Secy. to the Govt. of India.

The following Bill is published for general information, by order of His Excellency the Governor General, under the 19th of the Rules for the Conduct of Business at Meetings of the Council of the Governor General of India for the purpose of making Laws and Regulations :—

No. 12 OF 1871.

THE INDIAN INCOME TAX BILL.

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A BILL FOR IMPOSING DUTIES ON INCOME.

For the purpose of imposing duties on income arising from offices, property, professions and trades; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

Short title. 1. This Act may be called "The Indian Income Tax Act."

Local extent. It extends to the whole of British India;

Commencement of Act. It shall come into force on the first day of April 1871.

Repeal of Act XVI of 1870. 2. On and from the said day, Act No. XVI of 1870 shall be repealed:

Provided that such Act shall continue in force until the first day of April 1872

(a) as to taxes due thereunder, and
(b) as to assessments which ought to have been made thereunder, but which have not hitherto been made and completed.

The references made in the Court Fees Act, Schedule II, to the Indian Income Tax Act shall be deemed to be made to this Act.

3. In this Act—unless there be something repugnant in the subject or context—

"Income" means income and profits accruing and arising in British India.

"Magistrate" means any person exercising the powers of a Magistrate, or of a Subordinate Magistrate of the First Class, and includes a Magistrate of Police and a Justice of the Peace:

"Company" means an Association carrying on business in British India whose stock or funds is or are divided into shares and transferable, whether such Company be incorporated or not, and whether its principal place of business be situate in British India or not:

"Firm" includes a Hindú undivided family:

"Person" includes a firm:

"Defaulter" includes a firm making default under this Act:

"Rackrent" means the full rent or value at which lands or houses are worth to be let for the year.

In the case of any Company or Municipal or other public Body or Association not being a Company, "Collector" means the Collector of Land Revenue of the place or district at or in which its principal place of business in British India is situate. And in the case of any person chargeable under this Act, "Collector" means the Collector of Land Revenue of the place or district at or in which such person resides.

4. Nothing in this Act applies to the pay and allowances of officers, warrant officers, non-commissioned officers and privates of Her Majesty's Forces or of Her Majesty's Indian Forces, who are not in Civil employment, when such pay and allowances do not exceed five hundred rupees per mensem;

or to any moveable or immoveable property solely employed for religious or charitable public purposes.

And no member of a firm which is for the time being chargeable under this Act shall, as such, be chargeable under this Act.

5. The Governor General in Council may from time to time, by order, wholly exempt from the operation of this Act the whole or any part of the income and profits of any tribe or class of persons in British India.

The Governor General in Council may revoke any such order.

All orders and revocations made under this section shall be published in the *Gazette of India*.

PART II.

DUTIES ON OFFICES.

6. A duty of two pies for every rupee shall be levied in respect of every office or employment of profit in British India under Government or under a Company or a Municipal or other public Body or Association not being a Company,

and upon every salary, annuity or pension paid in British India by Government or by a Company or by a Municipal or other public Body or Association not being a Company to any person residing in British India or serving on board a ship plying to and from British Indian ports, whether on account of himself or another person.

7. No income amounting to less than sixty-two rupees eight annas per mensem shall be chargeable under this Part.

8. In the case of every person holding any paid office, employment or commission under Her Majesty or under the Government of India, or under any Local Government, or receiving any annuity or pension from Her Majesty or any such Government,

the duty to which he is liable under this Part shall be deducted from his pay, annuity or pension at the time of payment by the Examiner of Claims or other proper officer, and shall be deemed to be a tax paid under this Act.

9. In the case of every person holding a paid employment under or receiving any annuity or pension from any Company, or any Municipal or other public Body or Association not being a Company, the duty to which he is liable under this Part shall be deducted from his pay, annuity or pension at the time of payment by the Treasurer or other officer whose duty it is to make such payments, and shall be deemed to be a tax payable under this Act.

Every such Treasurer or other officer shall, as soon as may be after making such deductions, pay to the credit of the Government of India, or as such Government from time to time directs, the amount of such deductions and shall be answerable to such Government for such payment.

Every Company, public Body or Association, Treasurer or other officer as aforesaid is hereby indemnified for all deductions and payments made in pursuance of this section.

The Treasurer, Secretary or principal Agent or Manager of every such Company and public Body or Association shall prepare, and, on or before the thirtieth day of April in each year, deliver, to the Collector, in such form as may be prescribed by the Governor General in Council, a return in writing showing the names of every person holding at the date of the said return a paid employment under or receiving a pension or annuity from the Company or Body or Association whose pay or pension or annuity as such amounts to sixty-two rupees, eight annas per mensem or upwards, together with the salaries, annuities or pensions payable by the Company or public Body or Association to all such persons respectively.

10. Whenever the duty leviable under this Part in April 1871 or any subsequent month, is not deducted at the time of payment in that month from the pay, annuity or pension chargeable therewith, it shall be deducted from such pay, annuity or pension at some subsequent time of payment.

PART III.

COMPANIES.

11. The Treasurer, Secretary or principal Agent or Manager in India of every Shipping Company shall, in the case of a Shipping Company trading between British India and any other country, pay to Government in respect of one moiety of the nett profits made by each of the ships of such Company engaged in such trade, during the year ending on the day on which the Company's accounts shall have been last made up, the duty of two pies in the rupee,

and in the case of every other Company pay to Government in respect of the whole of the nett profits made in British India by such Company during the year ending on the day on which the Company's accounts shall have been last made up, the duty of two pies in the rupee,

and shall prepare, and, on or before the thirtieth day of April in each year, deliver, to the Collector, a statement in writing signed by him showing the result of such accounts.

12. If in the case of any Company no such accounts have been made up within any year ending on the thirty-first day of March, the Treasurer, Secretary or principal Agent or Manager of such Company shall prepare, and,

on or before the next following thirtieth day of April, deliver to the Collector a return in writing signed by him and stating the nett profits made by such ships or by the Company (as the case may be) during the year ending on the said thirty-first day of March.

13. Whenever the Collector has reason to believe that any statement or return mentioned in section eleven or section twelve is incorrect or incomplete, he may cause a notice to be served on the Treasurer, Secretary, Agent or Manager by whom such statement or return was delivered, requiring him, on or before a day to be mentioned in the notice, to attend at the Collector's office and to produce for the inspection of the Collector such of the accounts of the Company as refer to the year mentioned in section eleven or section twelve (as the case may be) and as are in the possession or power of such Treasurer, Secretary, Agent or Manager.

The Collector shall thereupon make an order determining the amount at which the company shall be assessed under this Part, and, subject to the provisions hereinafter contained, such sum shall be payable accordingly.

14. Every such Treasurer, Secretary, Agent or Manager is hereby indemnified for all payments made in pursuance of section eleven or section thirteen.

PART IV.

DUTIES ON INTEREST ON GOVERNMENT SECURITIES.

15. A yearly duty of two pies in the rupee shall be levied upon all interest on securities of the Government of India.

16. Every person empowered to pay such interest shall deduct the duty at the place where the interest is paid,

and shall, as soon as may be after making such deduction, pay the same to the credit of the Government of India, or as such Government from time to time directs,

and shall be answerable to the Government of India for such payment.

PART V.

DUTIES ON ALL OTHER INCOME AND PROFITS.

17. A yearly duty shall be levied in accordance with the first Schedule hereto annexed upon all income not chargeable under Part II, Part III, or Part IV of this Act.

18. The trustee, guardian, curator, or committee of any infant, married woman subject to the law of England, lunatic, or idiot, and having the control of the property of such infant, married woman, lunatic, or idiot, whether such infant, married woman, lunatic or idiot resides in British India or not, shall, if the infant, married woman, lunatic or idiot be chargeable under this Part, be chargeable with the said duty in like manner and to the same amount as would be charged to such infant if of full age, or to such married woman if she were

sole, or to such lunatic or idiot if he were capable of acting for himself.

Any person not resident in British India, whether a subject of Her Majesty or not, being in receipt, through an agent, of any income chargeable under this Part, shall be chargeable in the name of such agent in the like manner and to the like amount as he would be charged if resident in British India and in actual receipt of such income.

19. Every trustee, guardian, curator, committee or agent shall, when required by the Collector, deliver a statement signed by him, of the amount of the income in respect whereof he is chargeable on account of such infant, married woman, lunatic, idiot or non-resident, together with a declaration of the truth of the statement.

The Collector shall have power to serve a notice upon any person whom he has reason to believe to be a trustee, guardian, curator, committee or agent requiring him to deliver on or before a day to be specified in the notice a statement signed by him of the names of the persons for or of whom he is trustee, guardian, curator, committee or agent.

20. Receivers or Managers appointed by any Court in India, the Courts of Wards, the Administrators General of Bengal, Madras and Bombay, and the Official Trustees, shall be chargeable under this Act in respect of all income officially in their possession or under their control.

21. When any trustee, guardian, curator or committee, or agent is assessed under this Act in such capacity;

or when any receiver or manager appointed by any Court, Court of Wards, Administrator General, or Official Trustee is assessed under this Act in respect of the income and profits officially received by him;

every person and Court so assessed may, from time to time, out of the money coming to his or its possession as such trustee, guardian, curator, committee or agent, or as such receiver, manager, Court of Wards, Administrator General or Official Trustee, retain so much as shall be sufficient to pay the amount of the assessment.

Every such person and Court is hereby indemnified for every retention and payment made in pursuance of this Act.

22. Owners of lands or of houses occupying the same shall be chargeable in respect of the annual value thereof at the rackrent at which such lands or houses are worth to be let for the year.

23. In the case of every person chargeable under this Part whose annual income or profits is or are in the Collector's opinion on four thousand rupees or upwards, the Collector shall,

and in the case of every other person so chargeable, the Collector may

cause a notice to be served on him requiring him to fill in a return of his income during the three years ending on the thirty-first day of December next before the date of the notice, and to state in such return the period during which such income has actually accrued.

Such notice shall be in the form to be prescribed by the Governor General in Council, and shall specify the day by which the return is to be made, and the place of the Collector's office at which the return is to be made.

Every such notice shall be signed by the Collector.

The form of the return shall accompany the notice.

24. Every person on whom such notice is served shall send to or deliver at the Collector's office the return duly filled in and signed by him.

A declaration shall be added by such personated the foot of the return, (a) that the income stated therein is truly estimated on all the sources therein mentioned, (b) that it has actually accrued within the period therein stated, and (c) that he has no other source of income.

25. Every person, when required so to do by a notice in the form to be prescribed by the Governor General in Council

shall, within the period mentioned in such notice, prepare and deliver to the Collector a list containing, to the best of his belief, the name of every lodger or inmate resident in his dwelling-house, and of any other persons receiving salary or emoluments amounting to sixty-two rupees eight annas per mensem or upwards, employed in his service, whether resident in such dwelling-house or not, and the place of residence of such of them as are not resident in such dwelling-house, and also of any such lodger or inmate who has any ordinary place of residence elsewhere, at which he is liable under this Act to be assessed, and who desires to be so assessed at such place.

Such lists shall be signed by the persons respectively delivering the same, and shall be prepared in the form to be prescribed as aforesaid.

26. The Collector shall from time to time determine what persons are chargeable under this Part, and the amount at which every such person shall be assessed,

and in making such assessment income exempted under section seven shall be treated as chargeable under this Part.

27. Every such assessment shall be made upon an average of such person's income for three years ending on the thirty-first day of December next before the date of the assessment, and such average shall be computed upon the period during which the income has actually accrued.

In the case of a person for the first time becoming chargeable under this Part within the year of assessment, the assessment shall be made according to an average of his income for such period as the Collector shall, under the circumstances, direct.

28. The Collector shall cause a notice to be served on every person chargeable under this Part, stating—

Notice to persons chargeable.

(1).—The name and the profession, trade or other source of the income of such person, or in respect of which he is chargeable :

(2).—The year or portion of the year for which the duty is to be paid :

(3).—The place or places, district or districts, where such income accrues ; and

(4).—The amount to be paid ;

and requiring him within fifteen days from the date of the service either to pay such amount or to apply to the Collector to have the assessment reduced or cancelled.

29. Such amount shall be paid to the Collector, or, who shall give a receipt for such payment to the person making the same :

Officer to give receipts.

Provided that, if such income accrues at or in more than one place or district, the receipt shall be granted and payment made by and to the Collector for the place or district at or in which the person mentioned in the notice resides, or (in the case of a firm) at or in which its principal place of business in British India is situate.

Every such receipt shall be signed by the Collector granting it, or by such other officer as he shall from time to time empower in this behalf, and such signature shall be judicially noticed.

Contents of receipt.

30. Every such receipt shall specify—

(1).—The name and source or sources of the income of the person by or on whose behalf the duty is paid :

(2).—The year or portion of the year for which the duty is paid :

(3).—The amount paid, and the date of payment ; and

(4).—The place or places, district or districts, where the income accrues ;

and shall be admissible as *prima facie* proof of all matters contained therein.

PART VI.

PETITIONS AND APPEALS AGAINST ASSESSMENTS.

31. Any person objecting to the amount at which he is assessed, or denying his liability to be assessed under Part V, may within the period mentioned in the notice mentioned in section twenty-eight, or if the Collector is satisfied that the objector has not received such notice, then at any time within one month from the expiration of such period, apply by petition to the Collector in order to establish his right to have the assessment reduced or cancelled :

Provided that no person who has been served with a notice under section twenty-three shall be entitled to apply by petition under this section unless he has made the return required in such notice on or before the day therein mentioned, or unless he satisfies the Collector that he had a sufficient excuse for not making such return.

Proviso.

The petition shall be in the form contained in the schedule hereto annexed, or as near thereto as circumstances admit, and the statements therein contained shall be verified by the petitioner or some other competent person in manner required by law for the verification of plaints.

Form and verification of petition.

32. The Collector shall fix a day for the hearing of the petition, and, on the day so fixed, or on the day (if any) to which he has adjourned such hearing, shall hear such petition and pass his order thereon.

Such order may be in favour of the petitioner, or it may simply reject the petition, or it may reject the petition and enhance the petitioner's assessment to an amount to be specified in the order.

If the order be in favour of the petitioner, the Collector shall at once refund the fee on the petition.

If the order simply reject the petition or reject the petition and enhance the petitioner's assessment, the petitioner shall within one week from the passing of the order pay the amount mentioned in the said notice or in the order of enhancement (as the case may be).

33. Any person dissatisfied with any order under section thirteen or section thirty-two may, within fifteen days from the date thereof, on payment of the sum assessed or to which the assessment was enhanced, present a petition of appeal to the Commissioner of Revenue of the Division, whose order upon such appeal shall be final.

Appeal to Commissioner from order under section 13 or section 32.

Such order may be in favour of the petitioner, or it may simply reject the petition, or it may reject the petition and enhance the assessment to an amount to be specified in the decision.

If the order rejects the petition and enhances the assessment, the petitioner shall within one week from the passing of the order pay the amount mentioned in the order of enhancement.

Every petition presented under this section shall be accompanied by a copy of the petition to the Collector, and a copy of the Collector's order thereon and a list of the documents (if any) on which the appellant relies.

Documents to accompany appeal.

Neither of such copies shall be chargeable under the Court Fees Act.

Copies of petition and order exempt from fees.

When the decision on such appeal is in favour of the petitioner, the value of the fee on his petition of appeal, and (where he has presented a petition to the Collector) the fee on such petition, together with the excess paid by him, or (when the decision is that the petitioner, or the Company which he represents, is not chargeable under this Act) the whole sum so paid, shall at once be refunded.

Return of fees and excess.

34. The Collector or Commissioner may summon any person whom he thinks able to give evidence for the purpose of enabling him to determine how the petitioner, or the Company which he represents, should be assessed, and

Power to summon persons to give necessary information.

may examine on oath the person so summoned and the petitioner, and may require each of them to produce any documents in his possession or power relating to the sources of the income in question.

35. Whenever the Collector has reason to believe that, in assessing any person under this Act, any source of income not specified in the receipt granted to him under section twenty-nine has been overlooked, which source, if it had then been known to exist, would have increased the assessment, the Collector may cause a further notice to be served on such person, stating the amount to be paid in respect of such source.

The provisions contained in sections twenty-eight to thirty-four (both inclusive) shall apply to such notice and regulate the procedure thereunder.

36. No Advocate, Pleader, or other legal practitioner shall be allowed to appear or plead on behalf of any other person on the hearing of any petition or appeal under this Part.

PART VII.

PAYMENT AND RECOVERY OF TAX.

37. All taxes under this Act, except when they are deducted under section eight or section nine, shall be payable on the first day of April in this and every subsequent year:

Provided that the amount so payable may be paid by two equal instalments: the first instalment to be paid on some day not later than fifteen days after service of the notice mentioned in section twenty-eight upon the person paying the same, and the second instalment on the first day of October.

38. If the Collector has caused a notice to be served on any person liable to pay the said second instalment and requiring him within seven days from the date of the service to pay the amount of such instalment (mentioning it), and if the person so served does not within that period pay such amount as required by the said notice, a sum not exceeding twice the amount so mentioned may be recovered from him in manner hereinafter mentioned.

39. In any case of default under this Act, the Collector may, if a notice has been served on the defaulter requiring him to pay, within fifteen days from the date of the service, the amount of the tax or instalment due by him under this Act, recover a sum not exceeding double the amount of such tax or instalment.

Every such sum shall be recoverable as if it were an arrear of land-revenue:

Provided that where any person has presented a petition under section thirty-one, such sum shall not be recoverable from him unless, within one week from the passing of the order thereon, he fails to pay the amount (if any) required by such order.

On the recovery of such sum from the defaulter, the Collector shall grant him a receipt without any further payment.

Every such receipt shall bear date from the recovery of the amount, and, save as aforesaid, the provisions of this Act relating to receipts shall apply to receipts granted under this section.

40. If within or at the end of the year for which any computation under Part V has been made, the person assessed proves to the satisfaction of the Collector, that his income during such year fell short of the sum so computed, the Collector may cause the assessment made for such year to be amended as the case requires, and if the sum assessed has been paid, may refund the sum overpaid.

In case any person assessed under Part V ceases to exercise the profession, or to carry on the trade, in respect whereof such assessment was made, or dies or becomes insolvent before the end of the year for which the assessment was made, or is, from any other specific cause, deprived of or loses the income on which the computation was made,

he or his representative in interest may apply to the Collector within three months after the end of such year, and on proof thereof to his satisfaction, the Collector shall amend the assessment as the case may require, and give such relief to the person charged or his representative in interest as is just, and in cases requiring it, the Collector shall refund such sum as has been overpaid on the assessment amended or vacated.

PART VIII.

PENALTIES.

41. Every Treasurer, Secretary, Agent, Manager or other person failing to make payments or deliver returns, or to prepare and deliver any return required by section nine or section sixteen,

or failing to make any payment or to prepare and deliver in due time any statement or return required by section eleven,

and every trustee, guardian or curator, committee or agent failing to deliver any statement or declaration required by section nineteen,

shall, for every day during which such default continues, be fined, on conviction before a Magistrate, ten rupees.

The Commissioner of the Division shall have power to remit wholly or in part any penalty imposed under this section.

42. Whoever makes a statement in any declaration or list made or delivered under section twenty-four or twenty-five, which is false, and which he either knows or believes to be false or does not believe to be true, shall be deemed to have committed the offence described in section one hundred and seventy-seven of the Indian Penal Code.

Whoever makes a statement in any petition presented under section thirty-one which is false, and which he either knows or believes to be false or does not believe to be true, shall be deemed to have intentionally given false evidence in a stage of a judicial proceeding.

43. No person shall be proceeded against for any offence under section forty-one or section forty-two except at the instance of the Collector.

44. In sections one hundred and ninety-three and two hundred and twenty-eight of the Indian Penal Code, the words "judicial proceeding" shall be taken to include any proceeding under this Act.

PART IX.

MISCELLANEOUS.

45. Subject to the provisions of section thirty-three, every order made under this Act shall be final and conclusive, and the proceedings of the Collector or Commissioner of Revenue shall not be removeable into any Court, or be subject to revision.

46. All or any of the powers and duties conferred and imposed by this Act on a Collector and on a Commissioner of Revenue may be exercised and performed by such other officers or persons as the Local Government shall from time to time appoint in this behalf.

47. Service of any notice under this Act shall be made by delivering or tendering a copy thereof under the signature of the Collector.

Whenever it may be practicable, the service of the notice shall be on the person therein named, or, in the case of a firm, on some member thereof.

When such person or member cannot be found the service may be made on any adult male member of his family residing with him; and if no such adult male member can be found, the serving officer shall fix the copy of the notice on the outer door of the house in which the person or firm therein named ordinarily dwells or carries on business.

48. When any Company or firm has several places of business in the territories subject to different Local Governments, the Governor General in Council shall have power to declare which of such places shall, for the purposes of this Act, be deemed to be the principal place of business, and when any Company has several Agents or Managers, which of them shall, for the purposes of this Act, be deemed to be the principal Agent or Manager.

When any Company or firm has several places of business in the territories subject to a single Local Government, such Government shall have power to declare which of them shall, for the purposes of this Act, be deemed to be the principal place of business.

When any person has several places of residence in the territories subject to different Local Governments, the Governor General in Council shall have power to declare which of such places shall, for the purposes of this Act, be deemed to be his residence, and when any person has several places of residence in the territories subject to a single Local Government, such Government shall have power to declare which of such places shall, for the purposes of this Act, be deemed to be his residence.

The powers given by this section may be delegated to and exercised by such officers as the Governor General in Council or the Local Government, as the case may be, shall from time to time appoint in this behalf.

49. The Governor General in Council may from time to time

(a) prescribe forms for the returns, notices and lists herebefore mentioned,

(b) make rules consistent with this Act for the guidance of officers in matters connected with its enforcement, and

(c) delegate to any Local Government the powers given by this section, clause (b), so far as regards the territories subject to such Government.

SCHEDULE I.

Duties.

Persons whose annual income shall be assessed at not less than

Rs. 750	but at less than	1,000	shall pay	Rs. 9 0 0
Ditto	1,000	" "	1,500	" " 13 0 0
Ditto	1,500	" "	2,000	" " 18 0 0
Ditto	2,000	" "		two pies in the rupee.

SCHEDULE II.

Form of Petition under Section 31.

Stamp
eight annas.

TO THE COLLECTOR OF

The day of 187

The petition of A. B. of

SHEWETH—

1.—That under the Indian Income Tax Act your petitioner has been assessed in the sum of twenty-seven rupees for the year commencing the first day of April 187

2.—That your petitioner's income and profits accruing and arising from [here specify petitioner's trade or other source or sources of income or profits and the place or places at which such income or profits accrue or arise] for the three years ending the thirty-first day of December 187 were
rupees , as will appear from the documents of which a list is presented herewith.

3.—That such income and profits actually accrued and arose during a period of months and days. [Here state the exact number of months and days in which the income and profits accrued and arose.]

4.—That during the said three years your petitioner had no other income or profits.

Your petitioner therefore prays that he may be assessed accordingly, and that the value of the fee on this petition may be refunded [or that he may be declared not to be chargeable under the said Act, and that the value of the fee on this petition may be refunded].

(Signed) A. B.

Form of Verification.

I, A. B., the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

(Signed) A. B.

STATEMENT OF OBJECTS AND REASONS.

The present Income Tax Act (XVI of 1870) imposes a duty of $3\frac{1}{4}$ per cent. on all incomes of rupees 500 and upwards. The present Bill is intended to impose a duty of only $1\frac{1}{4}$ per cent. (or two pies in the rupee) and to affect no income less than rupees 750.

Besides these two important changes, the Bill introduces several minor modifications of the existing law.

In section 6, the word 'plying' has been substituted for 'trading,' so as to preclude a question which has been raised under the present law.

The Collector is empowered (section 13), in proper cases, to require officers of companies to attend and produce accounts.

The duty on interest on Government Securities will be deducted at the place where the interest is paid (sections 15, 16).

Owners of lands and houses occupying them are expressly made chargeable (section 22) in respect of their annual rackrent value, and a definition of 'rackrent' is inserted.

The Collector will be bound to serve the notice requiring returns only where the income is rupees 4,000 or upwards (section 23).

Every person served with such notices will be required to return his income during the three years ending 31st December next before the date of the notice, and to state the period during which such income actually accrued.

The assessments will be made (section 27) on an average of the income for such three years, and the average will be computed upon the period during which the income actually accrued.

Legal practitioners will be excluded (section 36) from appearing on any petition or appeal under the Act. A similar provision was contained in Act No. XXXII of 1860.

Payment may be made henceforward (section 37) in two, instead of four, instalments.

All sums due under the Act will be recoverable as if they were arrears of land-revenue (section 39).

Power is given (section 40) to amend the assessment when the person assessed shows that his income has diminished, or gives up business, or dies, or becomes insolvent.

Lastly, orders made under the Act will be final, and the proceedings of the Collectors and Commissioners will not be removeable into any Court or be subject to revision.

R. TEMPLE.

The 10th March 1871.

WHITLEY STOKES,
Secy. to the Govt. of India.

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 17th March 1871, and was referred to a Select Committee with instructions to make their report thereon in a week :—

No. 13 of 1871.

A Bill for the survey of Steam Vessels in the Port of Rangoon.

WHEREAS it is expedient to provide for the survey of Steam Vessels in the Port of Rangoon; It is hereby enacted as follows :—

Preamble.

I.—Preliminary.

1. This Act may be called "The Rangoon Steamer Survey Act."

It extends only to the territories under the administration of the Chief Commissioner of British Burma;

It shall come into force at the expiration of one month from the passing thereof.

Interpretation-clause. 2. In this Act—

"Chief Commissioner" means the Chief Commissioner of British Burma :

"Surveyors" includes any surveyor acting alone when authorised by the Chief Commissioner under the provisions of this Act.

II.—Survey of Steamers.

3. Every Steam Vessel plying in the Rangoon river, or on any of the rivers or waters of British Burma, and every British Steam Vessel plying between Rangoon and any Port or Ports, shall be liable to be surveyed twice in every year, in the manner hereinafter prescribed.

4. The Chief Commissioner may appoint fit and proper persons to be Surveyors for the purposes of this Act.

5. The said Surveyors, in the execution of their duties, may go on board any Steam Vessel liable to be surveyed under this Act, as soon as reasonably may be after the arrival of such Steam Vessel in the Port of Rangoon, and not so as unnecessarily to hinder the loading or unloading of such Steam Vessel, or to detain or delay her from proceeding on any voyage or service, and may inspect such Steam Vessel or any part thereof, and any of the machinery, equipments, or articles on board thereof.

The Owner, Master and Officers serving on board such vessel shall be bound to afford to the Surveyors all reasonable facilities for such inspection or survey, and to afford them all such information respecting such vessel and her machinery and equipments, or any part thereof respectively, as they may reasonably require.

6. When any survey is made under this Act the Surveyors making such survey shall forthwith, if satisfied that they can with propriety do so, and on pay-

ment by the Owner or Master of the ship surveyed of the fees hereinafter mentioned, give him a Certificate and Declaration signed by them and framed as nearly as the circumstances of each case will admit in the Form set forth in schedule A hereto annexed.

7. No Officer of Customs shall grant a clearance nor shall any Pilot be assigned to any Steam Vessel, liable to be surveyed under this Act, which has not been duly furnished with a Certificate and Declaration under the provisions of this Act applicable to the voyage on which she is about to proceed, or the service on which she is about to be employed.

If any Steam Vessel liable to be surveyed under this Act leaves or attempts to leave the Port of Rangoon without such Certificate and Declaration, any Officer of Customs or any Pilot on board such Vessel may detain her until she is duly furnished with such Certificate and Declaration.

8. The Chief Commissioner may give special direction to the Surveyors under this Act for the survey of any British Steam Vessel lying in the Port of Rangoon and plying between Rangoon and any other Port or Ports, and the provisions of this Act shall apply (so far as the same are applicable) to every vessel so specially directed to be surveyed, and the Owner, Master and Officers thereof.

9. The Chief Commissioner may frame Rules consistent with this Act as to—
(a) the manner in which the surveys shall be made,
(b) the times and places of such surveys, and
(c) the duties of the Surveyors.

10. For every survey made under this Act the Owner or Master of the Steam Vessel surveyed shall pay to each of the Surveyors making the same a fee, calculated on the tonnage of the vessel according to the rates in schedule B hereto annexed.

11. Each Certificate and Declaration granted by Surveyors under this Act shall be hung up, and remain at all times suspended in some conspicuous part of the vessel for which the same is granted, where the same may be easily read.

12. No Certificate or Declaration shall be in force for the purposes of this Act after the expiration of six months from the date thereof; provided that, if any Steam Vessel is absent from the Port of Rangoon when her Certificate and Declaration expire, no penalty shall be incurred for the want of a Certificate and Declaration, until she first begins to ply, or is about to ply after her next subsequent return to the Port of Rangoon.

The Chief Commissioner or any Officer appointed by him for that purpose, may require any Certificate and Declaration which has expired or has been revoked or cancelled to be delivered up as may be directed.

13. The Chief Commissioner or any Officer

Certificate and Declaration may be cancelled by Government.

appointed or authorized by him for that purpose, may revoke and cancel any Certificate and Declaration granted under this Act in any case in which he has reason to believe—

(1) that the Certificate and Declaration of the sufficiency and good condition of the hull, equipments, and machinery of any Steam Vessel, or either of them have been fraudulently or erroneously given or made, or,

(2) that such Certificate and Declaration have otherwise been issued upon false or erroneous information, or,

(3) that since the giving and making of such Certificate and Declaration the hull, equipments, or machinery of such ship have sustained any injury or are otherwise insufficient.

And in every such case the Chief Commissioner or such Officer as last aforesaid may, if he thinks fit, require the Owner or Master to have such Steam Vessel again surveyed as herein provided.

14. If any Steam Vessel is surveyed under

Power to order a second survey.

the provisions of this Act, and if the Surveyors decline to give any Certificate or Declaration or give a Certificate or Declaration with which the Owner or Master of the Steam Vessels is dissatisfied, the Chief Commissioner may, on the application of such Owner or Master, appoint two other competent Surveyors to survey the said Steam Vessel.

The Surveyors so appointed shall forthwith survey the said Steam Vessel, and shall either decline to give any Certificate and Declaration, or shall give such Certificate and Declaration as under the circumstances may seem to them proper.

Every survey made under this section shall be made subject to all the provisions and rules both as to the payment of fees and otherwise which are applicable to surveys made in ordinary cases under this Act.

If the Surveyors appointed under this section unanimously refuse to give any Certificate and Declaration or agree as to the terms of their Certificate and Declaration, such refusal or such Certificate and Declaration shall be final and conclusive; but if they do not agree, the refusal originally made, or the Certificate and Declaration originally granted by the Surveyors who surveyed the said Steam Vessel in the first instance, shall remain in force.

III.—Penalties.

15. Any person refusing access to any Sur-

Penalty for hindering them in making the survey or withholding required information.

veyors under this Act, or otherwise hindering them in the performance of their duty, or refusing or neglecting to give any information which may reasonably be required of him, and which he has in his power to give, shall be liable for each offence to

fine not exceeding five hundred rupees, or to imprisonment for a term not exceeding one month.

16. If any Steam Vessel liable to be surveyed

Leaving Rangoon without Certificate and Declaration.

under this Act leaves or attempts to leave the Port of Rangoon without such Certificate and Declaration as is mentioned in section seven, the Owner or Master of such Vessel shall, for each offence, be punished with fine not exceeding one thousand rupees.

17. If the Commander or any other Officer of a

Master or Officer who is a licensed Pilot attempting to take his ship out of Rangoon without a proper Certificate liable to lose his license.

Tug Steamer or of any other Steam Vessel, liable to be surveyed under this Act, is a licensed Pilot and leaves or attempts to leave the Port of Rangoon in such Tug Steamer or Steam Vessel being duly furnished with a Certificate and Declaration under the provisions of this Act, applicable to the voyage on which she is about to proceed, or the service on which she is about to be employed, such Commander or other Officer shall be liable to have his license as a Pilot taken away from him entirely or suspended for any period by the Chief Commissioner as the Chief Commissioner may see fit to order.

18. Any Surveyor demanding or receiving di-

Penalty for Surveyor who receives fees, &c., for making a survey.

rectly or indirectly from the Owner, Master, or Officer of any ship surveyed by him under the provisions of this Act, any fee or remuneration otherwise than as provided by this Act, shall be liable to dismissal, in addition to any other penalty to which he may by law be liable.

19. The Owner or Master of every Steam

Neglect to hang up Certificate and Declaration.

Vessel in which the Certificate and Declaration granted under this Act is not hung up and does not remain in manner provided by section eleven, shall, for each offence, be punished with fine not exceeding one hundred rupees.

20. Any Owner or Master or other person who

Refusal to comply with requirements of section 12.

without reasonable cause neglects or refuses to comply with any requirement made under section twelve shall be punished with fine not exceeding one hundred rupees for each offence.

21. Any case arising out of this Act may be

Offences under this Act by whom to be tried. the full powers of a Magistrate within whose jurisdiction the offence may have been committed, or by any Police Magistrate of the town of Rangoon.

The provisions of section fifty-five of Act No. XXII of 1855 (*for the regulation of Ports and Port dues*) are hereby extended to all fines imposed under this Act, and all fees due under section ten shall be recoverable as if they were fines.

SCHEDULE A.

Form of Surveyors' Certificate and Declaration.

	Name of Steam Vessel.
	Tonnage.
	When and where built and material.
	Power.
	Description of Engines and age.
	Description of Boilers and age.
	Ground tackle.
	Condition of Hull.
	General Equipment.
	Name of Master and Number of Officers and deck crew and of Engineers and Engine room crew.
	When and where last coppered, repaired or cleaned.
	Limits (if any) beyond which the vessel is not fit to ply.
	Time if less than six months for which the Hull, Boilers, Engines, or any of the Equipments will be sufficient.

We the undersigned declare that we have examined the above-named Steamer, and to the best of our judgment she and her engines, as shewn in the above Statement, are fully sufficient for the service on which it is intended to employ the said Steamer, that is to say (as the case may be)

A. B.
C. D.

SCHEDULE B.

Rules of Fees to be charged (referred to in section 10).

For Steamers of less than		200 Tons	Rs.	20	0	0	
"	"	200 tons and up to	350	"	25	0	0
"	"	350 " " "	700	"	30	0	0
"	"	700 " " "	1,000	"	40	0	0
"	"	1,000 " " "	1,500	"	50	0	0
"	"	1,500 " and upwards		"	60	0	0

Master Attendant.

STATEMENT OF OBJECTS AND REASONS.

The object of this Bill, which has been framed at the desire of the Chief Commissioner of British Burma, is to provide for the survey of Steamers in the Port of Rangoon. The Bill substantially agrees with the Bengal Act V of 1862, under which surveys are made in the Port of Calcutta.

The 12th March 1871.

F. S. CHAPMAN.

WHITLEY STOKES,
Secretary to the Govt. of India.



The Gazette of India.

Published by Authority.

CALCUTTA, SATURDAY, APRIL 1, 1871.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 19.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 31st March 1871, and was referred to a Select Committee with instructions to make their report thereon in two months:—

No. 14 of 1871.

A Bill to amend the Railway Act.

WHEREAS it is expedient further to amend Act No. XVIII of 1854 (relating to Railways in India);

It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Railway Act Amendment Act, 1871":

Local extent.

It extends to the whole of British India:

This section and sections two, four, eight and nine shall come into force on the passing hereof and the rest

Commencement.

of this Act shall come into force in respect of any Railway or part of a Railway when rules have been made under section four for such Railway or part thereof;

And this Act shall be read with, and taken as part of, the said Act No. XVIII of 1854 (relating to Railways in India) and Act No. XIII of 1870 (to apply the provisions of Act No. XVIII of 1854 to Railways belonging to, or worked by, Government).

Interpretation-clause.

2. In this Act—

'Railway' includes all lines of rail, sidings, or branches, worked over by locomotive engines for the

purposes of, or in connexion with, a Railway, also all stations, offices, ware-houses, fixed machinery and other works constructed, or being constructed for the purposes of, or in connexion with, a Railway:

'Cattle' means also elephants, camels, buffalos, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats and kids.

Act XVIII of 1854, sections 19, 20 and 21 repealed.

3. Sections nineteen, twenty and twenty-one of the said Act No. XVIII of 1854 are hereby repealed.

4. The Governor General in Council, or the Local Government, with the sanction of the Governor General in Council, shall make rules, and may in like manner from time to time vary the same, for the provision of fences for any Railway or any part thereof and for roads constructed in connexion therewith, and of gates or bars at places where any Railway crosses a road on the level, and for the employment of persons to open and shut such gates or bars.

5. The expression 'public road' in The Cattle Trespass Act, 1871, sections eleven and twenty-six, shall be deemed to include a Railway whether or not it be fenced.

Act I of 1871, sections 11 and 26, to apply to Railways.

6. The owner or person in charge of any cattle trespassing or straying within the fences of any Railway duly provided with fences and gates or bars in accordance with the rules applicable to such Railway, shall, on conviction before a Magistrate, be liable to a fine not exceeding ten rupees for each animal, in addition to any amount that may be recovered under the Cattle Trespass Act.

7. Whenever cattle are wilfully driven or permitted to go upon or across any Railway duly provided with fences and gates or bars in accordance with the rules applicable to such Railway, otherwise than for the purpose of crossing the Railway at a gate or bar provided as aforesaid, the person in charge of such cattle, or, if he cannot be identified, then the owner of the said cattle, shall, on conviction before a Magistrate, be liable to a fine not exceeding fifty rupees for each animal, in addition to any amount that may be recovered under the Cattle Trespass Act.

8. The Governor General in Council, or the Local Government, with the sanction of the Governor General in Council, may from time to time authorize subsidiary rules to be made—
Subsidiary rules how made and authorized.
 in the case of a Railway worked by a Company or person,—by such Company or person,

and in the case of a Railway worked by Government,—by the Local Government, or an officer specially appointed in this behalf by the Local Government.

Every subsidiary rule so made shall, if consistent with the regulations made and allowed under section twenty-nine of the said Act No. XVIII of 1854, have the same force as such regulations.

9. The Governor General in Council may from time to time, by notification in the *Gazette of India*, empower any authority or concurrent authorities to exercise the powers of the Local Government under this Act and the Acts mentioned in section one in substitution for, or

concurrently with, such Local Government, and may specify the local limits within which such powers may be so exercised.

STATEMENT OF OBJECTS AND REASONS.

The necessity for amending Act No. XVIII of 1854, relating to Railways in India, has long been recognised, and a Bill dealing with the subject in a comprehensive manner has long been before the Council. But objections have been taken to the form of the Bill, which are admitted to have force, and the Government of India considers that the whole question must be reconsidered. Hence a sensible delay must arise before the required amendment of the law is effected.

Certain matters, however, have from time to time come before the Government, which it is not expedient to leave unprovided for till the new law can be passed, and the present Bill is introduced to meet those cases for which immediate legislation seems necessary.

The principal point is the modification of the law as to fencing and cattle trespass, which is in some respects too strict and in others too lax.

It is further necessary to correct defects in the definitions of some of the terms used in the old law.

Also, some extension is needed to the power of making regulations for the guidance of Railway servants.

R. STRACHEY.

The 20th March 1871.

WHITLEY STOKES,
 Secy. to the Govt. of India.

The following Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 27th March 1871:—

We, the undersigned, the Members of the Select Committee of the Council of

Memorial from the Theists, known as Bráhmans of Calcutta, dated 11th September 1868.

From President of Pársi community of Bombay, dated 11th November 1868.

Memorial from certain members of the Hindú community of Bombay, dated 13th November 1868.

from Adi Bráhma Samájá of Calcutta, dated 26th November 1868.

Endorsement, Home Department, No. 499, dated 1st December 1868, forwarding memorial from British Indian Association, dated 29th November 1868.

Home Department, No. 500, dated 1st December 1868, forwarding letter from Government of Bengal, No. 5172, dated 29th October 1868, and enclosure.

Memorial from the Pársis of Bombay, dated 15th December 1868.

Endorsement, Home Department, No. 50, dated 21st January 1869, forwarding memorial from the Head of the Pársi community, Surat, dated 4th January 1869.

Home Department, No. 51, dated 21st January 1869, forwarding memorial of certain Pársi inhabitants of Bombay, dated 9th November 1868.

Home Department, No. 52, dated 21st January 1869, forwarding memorial from certain landholders, North-Western Provinces, Allahabad, dated 16th December 1868.

Memorial from Members of Allahabad Institute, dated 2nd December 1868.

Endorsement, Home Department, No. 97, dated 8th February 1869, forwarding letter from Secretary, Allahabad Bráhma Samájá, No. 43, dated 25th January 1869, and enclosure.

Home Department, No. 109, dated 10th February 1869, forwarding despatch from Secretary of State for India, No. 41, dated 8th December 1868.

Minute by Hon'ble H. S. Maine, dated 4th September 1868.

Memorial from Bombay Association, dated 2nd January 1869.

From Officiating Under Secretary to Government of Bengal, No. 560, dated 8th February 1869.

Memorial from Hindús of Bombay, dated 18th February 1869.

Minute by Hon'ble Sir Dig Bijay Singh, dated 9th March 1869, and enclosure.

of the Governor General of India for the purpose of making Laws and Regulations to which the Bill to legalize marriages between certain Natives of India not professing the Christian Religion was referred, have the honour to report that we have considered the Bill and the papers noted in the margin.

It is the unanimous opinion of the Local Governments that the Bill as introduced should not be passed. They all, on the other hand, agree that the Bill would be unobjectionable if confined to the Bráhma Samájá, for whose benefit it was originally designed. We have, accordingly, narrowed its operation to the members of that sect.

From Chief Commissioner of Coorg, No. 173-2, dated 12th May 1869, and enclosures.
 " Secretary to Chief Commissioner, British Burma, No. 395, dated 2nd May 1869.
 " Officiating 1st Assistant Resident, Hyderabad, No. 3021, dated 1st July 1869, and enclosures.
 " Secretary to Government, North-Western Provinces, No. 1257a, dated 23rd August 1869, and enclosures.
 " Secretary to Government, North-Western Provinces, No. 1527A, dated 9th September 1869, and enclosures.
 Opinion by Hon'ble J. B. Norton, Advocate General, Madras, dated 11th August 1869.
 From Officiating Secretary to Chief Commissioner, Oudh, No. 4279, dated 25th September 1869.
 From Secretary to Government, Madras, No. 1480, dated 29th October 1869, and enclosures.
 " " to Chief Commissioner of Oudh, No. 5237, dated 20th November 1869, and enclosures.
 " " to Government, Panjab, No. 1675, dated 10th November 1869, and enclosures.
 " " to Government, North-Western Provinces, No. 355A, dated 16th January 1870, and enclosure.
 Despatch from Secretary of State, No. 20, dated 6th May 1869.
 From Acting Under Secretary to Government of Bombay, No. 2242, dated 25th July 1870, and enclosures.
 Endorsement, Home Department, No. 507, dated 9th December 1870, forwarding letter from Acting Secretary to Government of Bombay, No. 3929, dated 15th October 1870, and enclosures.
 From Babu Kesulab Chandra Sen, dated 19th December 1870, forwarding opinion of the Advocate General, Calcutta.

We have provided that the parties shall, before the solemnization of the marriage, sign a declaration that they are members of the Bráhma Samája, that they are unmarried, that the bridegroom has completed his age of 18 years and the bride her age of 14 years, that they are not related to each other within the degrees of consanguinity or affinity prohibited by the custom which would have regulated a marriage between them if the Act had not been passed, and (when the wife has not completed her age of eighteen) that the consent of her father or guardian has been given to the marriage.

We have provided that the marriage fee shall be payable immediately after the solemnization, and may, in case of non-payment, be recovered as if it were a fine.

In some cases, it appears that, in marriages heretofore solemnized between Bráhmās, the rule as to the age of the parties has not been strictly observed. In section (9) legalizing prior marriages, we have, accordingly, omitted the reference to clause 3 of section 2.

We have struck out the table of prohibited degrees, which, however well adapted to Bengal, was unsuited for other parts of India.

We recommend that the Bill thus altered be passed.

J. F. STEPHEN.

F. B. COCKERELL.

The 27th March 1871.

AMENDED BILL.

A Bill to legalize Marriages between members of the Bráhma Samája.

WHEREAS it is expedient to legalize marriages between the members of the sect called the Bráhma Samája when solemnized in accordance with the provisions of this Act; It is hereby enacted as follows:—

1. This Act may be cited as "The Bráhma Marriage Act, 1871."

Local extent. It extends to the whole of British India,

Commencement. and it shall come into force on the passing thereof.

Conditions of validity of Bráhma marriages. 2. Every marriage between members of the said sect shall be valid—

(1). If it is solemnized in the presence of the Registrar hereinafter mentioned and of at least three credible witnesses, in whose hearing each of the parties makes the following declarations:—

"I, A B, am a member of the Bráhma Samája."

"I, A B, declare in the presence of Almighty God that I take thee C D to be my lawful wedded wife [or husband]," or words to that effect:

(2). If the parties are unmarried:

(3). If the husband has completed his age of eighteen years, and the wife has completed her age of fourteen years:

(4). If the parties are not related to each other in any of the degrees of consanguinity or affinity prohibited by the custom which would have regulated marriages between them if this Act had not been passed; and

(5). If, in case the wife has not completed her age of eighteen years, the consent of her father or guardian has previously been given to the marriage.

Explanation:—A widower and a widow shall be deemed to be 'unmarried' within the meaning of this section.

3. It shall not be necessary for the Registrar to satisfy himself of the truth of the facts referred to in the second and following clauses of section two. But immediately before the solemnization of the marriage, a declaration in the form contained in the first schedule hereto annexed shall be signed by the following persons:—

(1) the parties to the intended marriage, and if the woman has not completed her age of eighteen years, her father or guardian, and

(2) three witnesses,

and shall be countersigned by the Registrar.

4. Every such marriage hereafter solemnized shall, as soon as may be after the solemnization thereof, be certified by such person as the Local Government from time to time appoints in this behalf for the District in which the mar-

riage is solemnized. He shall be called the Registrar of Bráhma Marriages, and he may be the Registrar appointed under the Indian Registration Act.

Such certificate shall be in the form contained in the second schedule hereto annexed, and shall be signed by the Registrar and three witnesses present at the marriage.

5. The husband shall pay a fee of two rupees to the Registrar, if the marriage is solemnized in his office, and if it is solemnized elsewhere within his District, such fee as the Local Government prescribes.

Every such fee shall be payable immediately after the solemnization of the marriage, and may, in case of non-payment, be recovered as if it were a fine imposed by the Magistrate of the District.

6. On payment or recovery of the fee the Registrar shall enter the declaration and certificate in a register to be kept by him for the purpose.

Such register shall at all reasonable times be open for inspection, and shall be admissible as evidence of the truth of the statements therein contained. Certified extracts therefrom shall on application be given by the Registrar on the payment to him by the applicant of two rupees for each such extract.

7. Every person required to subscribe or attest such declaration or certificate who wilfully neglects or omits to do, shall, on conviction of such neglect or omission, be punished by a fine not exceeding one hundred rupees.

8. Every person making, signing or attesting any such declaration or certificate containing a statement which is false, and which he either knows or believes to be false, or does not believe to be true, shall be deemed guilty of the offence described in section one hundred and ninety-nine of the Indian Penal Code.

9. Every person married under this Act who, during the life-time of his or her wife or husband, contracts any marriage shall be subject to the penalties provided in sections four hundred and ninety-four and four hundred and ninety-five of the Indian Penal Code for the offence of marrying again during the life-time of a husband or wife.

10. Every member of the said sect who, before the passing of this Act, has gone through any ceremony with the intent of thereby contracting marriage with any other person who, at the time of the said ceremony, was a member of the same sect, shall be deemed to have been married under this Act, if the marriage was solemnized in the presence of at least three witnesses, and if the conditions specified in section two, clauses two, four and five, were complied with in the case of such marriage.

FIRST SCHEDULE.

(See section 3).

Declaration.

We, *A B* [the bridegroom] and *C D* [the bride], hereby declare as follows:—

1. We, the said *A B* and *C D*, are members of the Bráhma Samája:

2. Neither of us is married:

3. I, *A B*, have completed my age of eighteen years and I, *C D*, have completed my age of fourteen years:

4. We believe that we are not related to each other in any of the degrees of consanguinity or affinity prohibited by the custom which would have regulated a marriage between us if the Bráhma Marriage Act had not been passed:

[And where the bride has not completed her age of eighteen years:]

5. The consent of *M N* the father [or guardian] of me, the said *C D*, has been given to a marriage between me, the said *C D*, and the said *A B*, and such consent has not been revoked.

6. We are aware that, if any statement in this declaration is false, and if the person making such statement either knows or believes it to be false, or does not believe it to be true, he or she is liable to imprisonment and also to fine.

(Signed) *A B* (the bridegroom).
C D (the bride).

Signed in our presence by the above named *A B* and *C D*:

G H,
I J, } (three witnesses).
K L,

[And when the bride has not completed her age of eighteen years:]

M N, the father [or guardian] of the above-named *C D*.

(Countersigned) *E F*,

Registrar of Bráhma Marriages for the District of

Dated the day of 18 .

SECOND SCHEDULE.

(See section 4).

Registrar's Certificate.

I, *E F*, certify that on the of 18 appeared before me *A B* and *C D*, each of whom in my presence and in the presence of three credible witnesses, whose names are signed hereunder, made the declarations required by the second section of the Bráhma Marriage Act, 1871, and I further certify that the said *A B* and *C D* are lawfully wedded husband and wife.

(Signed) *E F*,

Registrar of Bráhma Marriages for the District of

G H,
I J, } (three witnesses).
K L,

Dated the day of 18 .

WHITLEY STOKES,

Secy. to the Govt. of India.

SURVEYOR GENERAL'S DEPARTMENT NOTICE.

MAPS OF THE SURVEY OF INDIA.

With the view of facilitating the purchase or procurement of the published *Lithographed, Photozincographed, and Engraved* maps of the Survey of India, the undersigned notifies for general information, that Agents have been appointed under each of the local Governments and Jurisdictions, as below specified, from whom all available maps will in future be procurable on application, either by sale, or on the public service, as the case may be.

2. It is particularly requested, that purchasers and Officials, in each Jurisdiction, will apply in the first instance, to the local Agent, for such maps as they may require, and on failing to receive the same, then Messrs. Thacker, Spink and Co., St. Andrew's Library, sole Agents in Calcutta, should be addressed for those required *on sale*, or the Registrar of the Surveyor General's Office at Calcutta, for those required on the *Public Service*. By obtaining maps on the spot, or at the shortest distances, it is hoped, delay and inconvenience, as well as postage, will be spared.

3. Local Agents will supply maps gratis on the *public service*, when the requisition is supported by competent authority, but the cost of mounting, binding and packing must be borne by official applicants. Under the new Postal Rules, *Banghy* charges cannot be met by the Survey Department.

4. Maps are supplied from the Surveyor General's Office, Calcutta, *on the Public service only*. Maps are procurable *on sale* from Messrs. Thacker, Spink and Co. and local Agents only.

5. The Surveyor General's Office does not undertake the mounting and binding of maps, and cannot defray the cost of the same.

6. Maps exceeding 3 feet in length cannot be dispatched by *banghy dawk*.

7. When lithographed District Maps, on the scale of 4 miles = 1 inch are applied for, which may not then be available, the engraved Sheets of the Indian Atlas, containing the required Districts, or any other good Map of the same country, will be sent.

AGENTS.

LONDON. — Messrs. Allen & Co. Waterloo Place.
" Mr. Edward Stanford, 6, Charing Cross.
CALCUTTA. — Messrs. Thacker, Spink & Co.
ALLAHABAD. — Curator of Books, N. W. Provinces.
NAGPOOR. — Curator of Books, Central Provinces.
LAHORE. — Manager Punjab Printing Company, Limited.

8. Maps are not issued from the Surveyor General's Office to private applicants, or *on sale*. Whenever communications are received from non-official applicants, they are transferred to the agents for disposal.

9. Maps published or printed by other Departments, are not issued by this office.

Note. Supplementary Lists of new maps, published at the Surveyor General's Office, are issued monthly, and are notified in the *Gazettes of India and Calcutta*.

SURVEYOR GENERAL'S OFFICE,)
Calcutta, 6th February 1871.)

H. L. THUILLIER, Colonel,
Surveyor General of India.

The ENGRAVED INDIAN ATLAS SHEETS in accordance with the squares marked on the annexed Index Map. Scale 4 British Miles = 1 Inch. Size of full sheets 8 feet 4½ Inches by 2 feet 8½ Inches. Compiled from the Topographical and Revenue Surveys & based on the Trigonometrical Survey. Price 2 Rs. Colored & Unmounted. ½ Sheets, instead of full sheets, will in future be published, price 12 annas each.

List of the Indian Atlas Sheets already published to date.—

Number of the Atlas Sheets.	Principal Places in each Sheet.	Number of the Atlas Sheets.	Principal Places in each Sheet.
4	Koorum Valley, Cabul	46	Chumba, Kooloo, Lahoul, Spitti.
5	½ Sheet. F. Kanigoorum, Mahsood-Wuzeeri hills, Tank.	47	Loodhiānah, Simlah, Kangrah, Hoshiarpur, Bisahir, Kassaoli, Chenec.
6	½ Sheet. E. Solimani Hills, Drabund, Vehowah.	48	Mussoorie, Landour, Kurnal, Saharanpoor, Umballah, Mozuffurnugur, Bijnour, Dehra, Sirhind, Puttiala, Thaneysur.
7	Dajil, Hurrund, Wuddore, Shum plain (Western Half blank)	49	* Delhi, Meerut, Boolundshuhur, Goorgaon, Jheend, Jhujhur, Rohtuk, Rewaree, Hisar, Hanace.
8	½ Sheet. N. E. Mithun Kote.	50	Agra, Muthra, Bhurtpoor, Dholpoor, Ulwar, Koel, Allygurh, Jeypoor.
14	Peshawar, Attock, Swat, Hazara (Western Half), Kohat.	51	½ Sheets. N. E. & N. W. Part of Gwalior, Kerowlie, Jeypoor, Tonk and Dholpoor.
15	Sakesar, Bunnoo, Shahpoor, Kalabagh, Pind Dadun Khan.	54	* Ellichpoor, Gawilgurh, Baitool, Ascergurh, Oomrauwutty, Boorhanpoor (North of Taptee blank.)
16	Dehra-Ishmael-Khan, Jhung, Leia.	55	Maiker, Bassim, Jalnah, Karinja, Akola, Mahore.
17	Dehra-Gazee-Khan, Mooltan, Mozuffurgurh, (Bhawulpoor portion blank.)	56	Oodgheer, Daroor, Kowlas, part of Nundair, Beder, &c.
24	Damaun, Jowar, Bhewndee.	57	Koolburga, Koileonda, Kullianee, Suggur, Mulkhaid, Nuldroog, and part of Sholapoor.
25	Bombay, Kolaba, Bhor Ghaut, Ban Kote.	58	Baichoor, Moodgul, Davurkonda, Bellary, and part of Kurnool.
26	Rutnagherry, Unjunvel, Viziadroog.	59	Chittledroog, Codyconda, Raidroog, Pennacondah, Hossdroog.
27	With sheet 41—(See below.)	60	Mysore, Seringapatam, Bangalore.
27A	½ Sheet. S. E., Skardo, Rondu, Astor, Boonjie, Shigar, North Kashmir.	61	Coimbatore, Ootakamund, Ponany, Hurdanhully, and parts of Malabar and Salem.
28	Kashmir, Abbottabad or Hazara, Khagan, Murree, Deesai Plain.	62	Cochin, Pulnee, Dindigul, and parts of Travancore, Tinnevelly, and Madura.
29	Rawul-Pindee, Jamoo, Jhelum, Sealkote, Goojrat.	63	Cape Comorin, Tinnevelly, Quilon, Trivandram.
30	Lahore, Umritsur, Ferozepoor, Googaira, Jalindhur.	65	Gangotri, Nilang, Chaprung, Garoo, or Garkot. (North & East portion blank)
31	Pak-Pattun, Sirsuh, Ubohur, Bhutinda.	66	† Almorah, Sreenugur, part of Gurhwal, Nujeebahad, Nugeena, Behur (sheet almost blank.)
38	Nassick, Thul-Ghat, Arungabad, Dowlatabad, Pyton (Khandeish blank.)	67	Bareilly, Pillebheet, Moradabad, Rampoor, Budaon, and parts of Shahjehanpoor, Oudh and Nepal.
39	Poonah, Purainda, Ahmednuggur, Mahabaleshwar.	68	* Furruckabad, Etah, Cawnpoor, Etawah, Myupooree, Bhind, Oonao, Hurdul.
40	Sattara, Kolapoor, Bejapoor.		
41	Goa, Darwar, Belgaum.		
42	Honawur, Soonda, Bilghy, and North-West part of Mysore		
43	Mangalore, Baicull, Coorg, (Merkara) and South-West part of Mysore.		
44	Calicut, Cananore, Tellicherry, Beypoor.		
44A	½ Sheet S. W. Baltistan or Little Tibet.		
45	½ Sheets N. W. & S. W. Dras, Sooroo, Chorbat, Kurgill, Baltistan or Little Tibet. Parts of Ladak & Maroo Wardwan.		

* Old Editions. 68, under revision.

† Almorah and the Hills in Gurhwal not yet Engraved.

List of the Indian Atlas Sheets published.—(continued.)

Number of the Atlas Sheets.	Principal Places in each Sheet.	Number of the Atlas Sheets.	Principal Places in each Sheet.
69	† Sheets, N. E. & N. W., & S. W. Jhansee, Kalpy, Banda, Dattin, Humeerpoor, Juloun, and part of Gwalior.	95	Masulipatam, Guntoor, mouths of the Kistna.
70	† Sheet, S. W. & N. W. Sangor, -Dumoh, Jubbulpoor, &c., incomplete.	102	Khatmandoo, Bettiah, Goruckpoor, Segowlee, Motcharee.
70	* Sangor, Dumoh, Huttah, Bejour, Belhari, Tehree, Punnah.	123	Patna, Aziungurh, Dinapoor, Arrah, Chupra, Tirhoot, Gazeepoor, Behar, Sasseram.
71	† Sheets, N. E. & N. W. Parts of Jubbulpoor, Nursingpoor, Hoshungabad, Sangor, and Dumoh, incomplete.	104	* Palamow, Hazareebaugh, Chota Nagpore and portion of Sirgooja, Shahabad, Mirzapoor, and South part of Behar. (Hazareebaugh & Palamow blank.)
72	Nagpoor, Seonee, Bundara, Chindwarra, Wurdah.	105	† Sheets N. E. & S. E. Dorunda, Gangpoor, Saranda, Palkote, Raiboga.
73	* Chandah, Hingunghaut, Edulabad, Wone, Utnoor.	106	Sumbhulpoor, Sarungur, Raigurh, Sonpur, Talcheer, Bonai, Bamra, Patna, Boad.
74	Eilgundel, Warungul, Maiduck, Mullangoor, Ramgeer, Neermul, Seroncha.	107	Ganjam, Goomsurgurh, Kalahandy, Chinna-Kimidi.
75	Hydrabad, Bongeer, Nalgunda, Daberconda.	108	Calingapatam, Vizianagram, Ryaguddah, Salur, Gooirissuram, Bimlipatam.
76	Ongole, Moralla, Paumoor, Innacanda, Ardiuga, Cumnum.	109	Vizagapatam, Waltair.
77	Cuddapah, Nellore, Tripetty hills.	111	Northern, portion of Tirhoot, and Purneah, Nathpoor, Amarpoor, Kishungunj, part of Nipal.
78	Madras, Arcot, Kistnagherry, Chittoor, Pulicat, Sadras, Punganore, Colar.	112	Purneah, Monghyr, Bhaugulpoor, Durbunga, Rajmahal, Barh, Colgong.
79	Pondicherry, Tanjore, Tranquibar, Trichopoly, Salem, South Arcot, Cuddalore, Porta Nova.	113	* Beerbhoom, or Soory, Raneegunj, Paras-nath, Pooralia, or Manbhoom, Khurruck-deea, Ramgurh. (S. W. portion blank.)
80	Madura, Point Calymere, Jafnapatam, Ramnad, Nuttam.	114	Midnapoor, Jungle-mehals, Singbhoom, Chaibasa, Bancoorah, Bishenpoor, part of Manbhoom, Baripadah, (Mohurbunj.)
81	Tuticorin, Calpentyn, Manar.	115	Balasore, Cuttack, Keonjur, Dhenkenal, South part of Mohurbunj.
87	† Sheet S. W. Lucknow, Barabankee, Oonao, &c.	116	Poorce and part of Cuttack, Bankeegurh, Chilka Lake.
88	* Futtchpoor, Allahabad, Mirzapoor, Benares, Chunar, Roy-Bareilly, Jounpoor, Sooltanpoor, Purnabgurh.	118	Kooch-Behar, Titalya, Darjeeling, Doobree, Rangamuttee. (Bhootan portion blank.)
89	* Rewah, Meyhere, Bandoogurh, Singrowlee, &c. (Southern Half blank.)	119	Bograh, Rungpoor, Dinajpoor, Malda, Myensing.
90	† Sheet S. E. Parts of Raipoor, Belaspoor, Sumbhulpoor, Oodeypoor and Sohagpoor, incomplete.	120	Rampoor-Baulea, Pubna, Burdwan, Moorshedabad, Berhampore, Kishnagurh, Furreedpore, Jessore, Serajgunj.
91	† Sheets, N. E. & S. E. Parts of Raipoor, Karial, Bodosamar, Patna, Bilaspoor and Sumbulpoor, incomplete.	121	24 Pergunnahs, Calcutta, Hooghly, Mutlah, Morellgunj, Tumlook, Contai, part of Soonderbuns.
92	† Sheet N. E. Parts of Raipoor, Bustar, Jeypoor, Noagarh and Karial, incomplete.	125	† Sheet S. E. Sylhet, and Cachar.
94	Rajamundry, Coringa, Ellore, Condapilly.		

* Old Editions. 69, 70 and 87 New Editions, Engraving in 4 sheets. 88 under revision.

SURVEYOR GENERAL'S OFFICE, }
Calcutta, 1st March 1871. }

H. L. THUILLIER, Colonel,
Surveyor General of India.



The Gazette of India.

Published by Authority.

CALCUTTA, SATURDAY, APRIL 8, 1871.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 19.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 31st March 1871, and was referred to a Select Committee with instructions to make their report thereon in two months:—

No. 14 OF 1871.

A Bill to amend the Railway Act.

WHEREAS it is expedient further to amend Act No. XVIII of 1854 (*relating to Railways in India*);

It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Railway Act Amendment Act, 1871".

Local extent.

It extends to the whole of British India:

This section and sections two, four, eight and nine shall come into force on the passing hereof and the rest of this Act shall come into force in respect of any Railway or part of a Railway when rules have been made under section four for such Railway or part thereof;

Commencement.

And this Act shall be read with, and taken as part of, the said Act No. XVIII of 1854 (*relating to Railways in India*) and Act No. XIII of 1870 (*to apply the provisions of Act No. XVIII of 1854 to Railways belonging to, or worked by, Government*).

Interpretation-clause.

2. In this Act—
'Railway' includes all lines of rail, sidings, or branches, worked over by locomotive engines for the

purposes of, or in connexion with, a Railway, also all stations, offices, ware-houses, fixed machinery and other works constructed, or being constructed for the purposes of, or in connexion with, a Railway:

'Cattle' means also elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats and kids.

Act XVIII of 1854, sections 19, 20 and 21 repealed.

3. Sections nineteen, twenty and twenty-one of the said Act No. XVIII of 1854 are hereby repealed.

4. The Governor General in Council, or the Local Government, with the sanction of the Governor General in Council, shall make rules, and may in like manner from time to time vary the same, for the provision of fences for any Railway or any part thereof and for roads constructed in connexion therewith, and of gates or bars at places where any Railway crosses a road on the level, and for the employment of persons to open and shut such gates or bars.

5. The expression 'public road' in The Cattle Trespass Act, 1871, sections eleven and twenty-six, shall be deemed to include a Railway whether or not it be fenced.

Act I of 1871, sections 11 and 26, to apply to Railways.

6. The owner or person in charge of any cattle trespassing or straying within the fences of any Railway duly provided with fences and gates or bars in accordance with the rules applicable to such Railway, shall, on conviction before a Magistrate, be liable to a fine not exceeding ten rupees for each animal, in addition to any amount that may be recovered under the Cattle Trespass Act.

Penalty for cattle-trespass within fences of a Railway.

7. Whenever cattle are wilfully driven or permitted to go upon or across any Railway duly provided with fences and gates or bars in accordance with the rules applicable to such Railway, otherwise than for the purpose of crossing the Railway at a gate or bar provided as aforesaid, the person in charge of such cattle, or, if he cannot be identified, then the owner of the said cattle, shall, on conviction before a Magistrate, be liable to a fine not exceeding fifty rupees for each animal, in addition to any amount that may be recovered under the Cattle Trespass Act.

8. The Governor General in Council, or the Local Government, with the sanction of the Governor General in Council, may from time to time authorize subsidiary rules to be made—
in the case of a Railway worked by a Company or person,—by such Company or person,
and in the case of a Railway worked by Government,—by the Local Government, or an officer specially appointed in this behalf by the Local Government.

Every subsidiary rule so made shall, if consistent with the regulations made and allowed under section twenty-nine of the said Act No. XVIII of 1854, have the same force as such regulations.

9. The Governor General in Council may from time to time, by notification in the *Gazette of India*, empower any authority or concurrent authorities to exercise the powers of the Local Government under this Act and the Acts mentioned in section one in substitution for, or

concurrently with, such Local Government, and may specify the local limits within which such powers may be so exercised.

STATEMENT OF OBJECTS AND REASONS.

The necessity for amending Act No. XVIII of 1854, relating to Railways in India, has long been recognized, and a Bill dealing with the subject in a comprehensive manner has long been before the Council. But objections have been taken to the form of the Bill, which are admitted to have force, and the Government of India considers that the whole question must be reconsidered. Hence a sensible delay must arise before the required amendment of the law is effected.

Certain matters, however, have from time to time come before the Government, which it is not expedient to leave unprovided for till the new law can be passed, and the present Bill is introduced to meet those cases for which immediate legislation seems necessary.

The principal point is the modification of the law as to fencing and cattle trespass, which is in some respects too strict and in others too lax.

It is further necessary to correct defects in the definitions of some of the terms used in the old law.

Also, some extension is needed to the power of making regulations for the guidance of Railway servants.

R. STRACHEY.

The 20th March 1871.

WHITLEY STOKES,
Secy. to the Govt. of India.

The following Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 27th March 1871:—

We, the undersigned, the Members of the Select Committee of the Council of

Memorial from the Theists, known as Bráhmās of Calcutta, dated 11th September 1868.

From President of Pársi community of Bombay, dated 11th November 1868.

Memorial from certain members of the Hindú community of Bombay, dated 18th November 1868.

“ from Adi Bráhma Samája of Calcutta, dated 26th November 1868.

Endorsement, Home Department, No. 499, dated 1st December 1868, forwarding memorial from British Indian Association, dated 23rd November 1868.

“ Home Department, No. 500, dated 1st December 1868, forwarding letter from Government of Bengal, No. 5172, dated 29th October 1868, and enclosures.

Memorial from the Pársis of Bombay, dated 15th December 1868.

Endorsement, Home Department, No. 50, dated 21st January 1869, forwarding memorial from the Head of the Pársi community, Surat, dated 4th January 1869.

“ Home Department, No. 51, dated 21st January 1869, forwarding memorial of certain Pársi inhabitants of Bombay, dated 9th November 1868.

“ Home Department, No. 52, dated 21st January 1869, forwarding memorial from certain landholders, North-Western Provinces, Allahabad, dated 16th December 1868.

Memorial from Members of Allahabad Institute, dated 2nd December 1868.

Endorsement, Home Department, No. 97, dated 8th February 1869, forwarding letter from Secretary, Allahabad Bráhma Samája, No. 43, dated 25th January 1869, and enclosures.

“ Home Department, No. 109, dated 10th February 1869, forwarding despatch from Secretary of State for India, No. 41, dated 8th December 1868.

Minute by Hon'ble H. S. Maine, dated 4th September 1868.

Memorial from Bombay Association, dated 2nd January 1869.

From Officiating Under Secretary to Government of Bengal, No. 560, dated 8th February 1869.

Memorial from Hindús of Bombay, dated 18th February 1869.

Minute by Hon'ble Sir Dig Bijay Singh, dated 9th March 1869, and enclosures.

the Governor General of India for the purpose of making Laws and Regulations to which the Bill to legalize marriages between certain Natives of India not professing the Christian Religion was referred, have the honour to report that we have considered the Bill and the papers noted in the margin.

It is the unanimous opinion of the Local Governments that the Bill as introduced should not be passed. They all, on the other hand, agree that the Bill would be unobjectionable if confined to the Bráhma Samája, for whose benefit it was originally designed. We have, accordingly, narrowed its operation to the members of that sect.

From Chief Commissioner of Coorg, No. 113-2, dated 12th May 1869, and enclosures.
 .. Secretary to Chief Commissioner, British Burma, No. 395, dated 2nd May 1869.
 .. Officiating 1st Assistant Resident, Hyderabad, No. 2021, dated 1st July 1869, and enclosures.
 .. Secretary to Government, North-Western Provinces, No. 1257a, dated 23rd August 1869, and enclosures.
 .. Secretary to Government, North-Western Provinces, No. 1527A, dated 9th September 1869, and enclosures.
 Opinion by Hon'ble J. B. Norton, Advocate General, Madras, dated 11th August 1869.
 From Officiating Secretary to Chief Commissioner, Oudh, No. 4279, dated 25th September 1869.
 From Secretary to Government, Madras, No. 1480, dated 29th October 1869, and enclosures.
 " " to Chief Commissioner of Oudh, No. 5237, dated 20th November 1869, and enclosures.
 " " to Government, Panjáb, No. 1575, dated 10th November 1869, and enclosures.
 " " to Government, North-Western Provinces, No. 355A, dated 18th January 1870, and enclosure.
 Despatch from Secretary of State, No. 20, dated 6th May 1869.
 From Acting Under Secretary to Government of Bombay, No. 2242, dated 25th July 1870, and enclosures.
 Endorsement, Home Department, No. 507, dated 9th December 1870, forwarding letter from Acting Secretary to Government of Bombay, No. 3929, dated 15th October 1870, and enclosures.
 From Bábú Kesab Chandra Sen, dated 19th December 1870, forwarding opinion of the Advocate General, Calcutta.

We have provided that the parties shall, before the solemnization of the marriage, sign a declaration that they are members of the Bráhma Samája, that they are unmarried, that the bridegroom has completed his age of 18 years and the bride her age of 14 years, that they are not related to each other within the degrees of consanguinity or affinity prohibited by the custom which would have regulated a marriage between them if the Act had not been passed, and (when the wife has not completed her age of eighteen) that the consent of her father or guardian has been given to the marriage.

We have provided that the marriage fee shall be payable immediately after the solemnization, and may, in case of non-payment, be recovered as if it were a fine.

In some cases, it appears that, in marriages heretofore solemnized between Bráhmas, the rule as to the age of the parties has not been strictly observed. In section (9) legalizing prior marriages, we have, accordingly, omitted the reference to clause 3 of section 2.

We have struck out the table of prohibited degrees, which, however well adapted to Bengal, was unsuited for other parts of India.

We recommend that the Bill thus altered be passed.

J. F. STEPHEN.

F. R. COCKERELL.

The 27th March 1871.

AMENDED BILL.

A Bill to Legalize Marriages between members of the Bráhma Samája.

WHEREAS it is expedient to legalize marriages between the members of the sect called the Bráhma Samája when solemnized in accordance with the provisions of this Act; It is hereby enacted as follows:—

- | | |
|--|---|
| 1. This Act may be cited as "The Bráhma Marriage Act, 1871." | Short title. |
| It extends to the whole of British India, | Local extent. |
| and it shall come into force on the passing thereof. | Commencement. |
| 2. Every marriage between members of the said sect shall be valid— | Conditions of validity of Bráhma marriages. |

(1). If it is solemnized in the presence of the Registrar hereinafter mentioned and of at least three credible witnesses, in whose hearing each of the parties makes the following declarations:—

"I, A B, am a member of the Bráhma Samája."

"I, A B, declare in the presence of Almighty God that I take thee C D to be my lawful wedded wife [or husband]," or words to that effect:

(2). If the parties are unmarried:

(3). If the husband has completed his age of eighteen years, and the wife has completed her age of fourteen years:

(4). If the parties are not related to each other in any of the degrees of consanguinity or affinity prohibited by the custom which would have regulated marriages between them if this Act had not been passed; and

(5). If, in case the wife has not completed her age of eighteen years, the consent of her father or guardian has previously been given to the marriage.

*Explanation:—*A widower and a widow shall be deemed to be 'unmarried' within the meaning of this section.

3. It shall not be necessary for the Registrar to

satisfy himself of the truth of the facts referred to in the second and following clauses of section two. But immediately before the solemnization of the marriage, a declaration in the form contained in the first schedule hereto annexed shall be signed by the following persons:—

(1) the parties to the intended marriage, and if the woman has not completed her age of eighteen years, her father or guardian, and

(2) three witnesses,

and shall be countersigned by the Registrar.

4. Every such marriage hereafter solemnized shall, as soon as may be after the solemnization thereof, be

Certificate of marriage. certified by such person as the Local Government from time to time appoints in this behalf for the District in which the mar-

riage is solemnized. He shall be called the Registrar of Bráhma Marriages, and he may be the Registrar appointed under the Indian Registration Act.

Such certificate shall be in the form contained in the second schedule hereto annexed, and shall be signed by the Registrar and three witnesses present at the marriage.

5. The husband shall pay a fee of two rupees to the Registrar, if the marriage is solemnized in his office, and if it is solemnized elsewhere within his District, such fee as the Local Government prescribes.

Every such fee shall be payable immediately after the solemnization of the marriage, and may, in case of non-payment, be recovered as if it were a fine imposed by the Magistrate of the District.

6. On payment or recovery of the fee the Registrar shall enter the declaration and certificate in a register to be kept by him for the purpose.

Such register shall at all reasonable times be open for inspection, and shall be admissible as evidence of the truth of the statements therein contained. Certified extracts therefrom shall on application be given by the Registrar on the payment to him by the applicant of two rupees for each such extract.

7. Every person required to subscribe or attest such declaration or certificate who wilfully neglects or omits so to do, shall, on conviction of such neglect or omission, be punished by a fine not exceeding one hundred rupees.

8. Every person making, signing or attesting any such declaration or certificate containing a statement which is false, and which he either knows or believes to be false, or does not believe to be true, shall be deemed guilty of the offence described in section one hundred and ninety-nine of the Indian Penal Code.

9. Every person married under this Act who, during the life-time of his or her wife or husband, contracts any marriage shall be subject to the penalties provided in sections four hundred and ninety-four and four hundred and ninety-five of the Indian Penal Code for the offence of marrying again during the life-time of a husband or wife.

10. Every member of the said sect who, before the passing of this Act, has gone through any ceremony with the intent of thereby contracting marriage with any other person who, at the time of the said ceremony, was a member of the same sect, shall be deemed to have been married under this Act, if the marriage was solemnized in the presence of at least three witnesses, and if the conditions specified in section two, clauses two, four and five, were complied with in the case of such marriage.

FIRST SCHEDULE.

(See section 3).

Declaration.

We, *A B* [the bridegroom] and *C D* [the bride], hereby declare as follows:—

1. We, the said *A B* and *C D*, are members of the Bráhma Samája:

2. Neither of us is married:

3. I, *A B*, have completed my age of eighteen years and I, *C D*, have completed my age of fourteen years:

4. We believe that we are not related to each other in any of the degrees of consanguinity or affinity prohibited by the custom which would have regulated a marriage between us if the Bráhma Marriage Act had not been passed.

[And where the bride has not completed her age of eighteen years:]

5. The consent of *M N* the father [or guardian] of me, the said *C D*, has been given to a marriage between me, the said *C D*, and the said *A B*, and such consent has not been revoked.

6. We are aware that, if any statement in this declaration is false, and if the person making such statement either knows or believes it to be false, or does not believe it to be true, he or she is liable to imprisonment and also to fine.

(Signed) *A B* (the bridegroom).
C D (the bride).

Signed in our presence by the above named *A B* and *C D*:

G H,
I J, } (three witnesses).
K L,

[And when the bride has not completed her age of eighteen years:]

M N, the father [or guardian] of the above-named *C D*.

(Countersigned) *E F*,
Registrar of Bráhma Marriages for the District of

Dated the day of 18 .

SECOND SCHEDULE.

(See section 4).

Registrar's Certificate.

I, *E F*, certify that on the of 18 appeared before me *A B* and *C D*, each of whom in my presence and in the presence of three credible witnesses, whose names are signed hereunder, made the declarations required by the second section of the Bráhma Marriage Act, 1871, and I further certify that the said *A B* and *C D* are lawfully wedded husband and wife.

(Signed) *E F*,
Registrar of Bráhma Marriages
for the District of

G H,
I J, } (three witnesses).
K L,

Dated the day of 18 .

WHITLEY STOKES,
Secy. to the Govt. of India.



The Gazette of India.

Published by Authority.

CALCUTTA, SATURDAY, APRIL 15, 1871.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 19.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 31st March 1871, and was referred to a Select Committee with instructions to make their report thereon in two months:—

No. 14 of 1871.

A Bill to amend the Railway Act.

WHEREAS it is expedient further to amend Act No. XVIII of 1854 (relating to Railways in India);

Preamble.

It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Railway Act Amendment Act, 1871":

Local extent.

It extends to the whole of British India:

This section and sections two, four, eight and nine

Commencement.

shall come into force on the passing hereof and the rest of this Act shall come into force in respect of any Railway or part of a Railway when rules have been made under section four for such Railway or part thereof;

And this Act shall be read with, and taken as part of, the said Act No. XVIII

This Act to be read with other Acts.

of 1854 (relating to Railways in India) and Act No. XIII of 1870 (to apply the provisions of Act No. XVIII of 1854 to Railways belonging to, or worked by, Government).

Interpretation-clause.

2. In this Act—

'Railway' includes all lines of rail, sidings, or branches, worked over by locomotive engines for the

purposes of, or in connexion with, a Railway, also all stations, offices, ware-houses, fixed machinery and other works constructed, or being constructed for the purposes of, or in connexion with, a Railway:

'Cattle' means also elephants, camels, buffalos, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats and kids.

Act XVIII of 1854, sections 19, 20 and 21 repealed.

3. Sections nineteen, twenty and twenty-one of the said Act No. XVIII of 1854 are hereby repealed.

4. The Governor

Power to make rules as to fences, gates and bars.

General in Council, or the Local Government, with the sanction of the Governor General in Council, shall make rules, and may in like manner from time to time vary the same, for the provision of fences for any Railway or any part thereof and for roads constructed in connexion therewith, and of gates or bars at places where any Railway crosses a road on the level, and for the employment of persons to open and shut such gates or bars.

5. The expression 'public road' in The Cattle

Act I of 1871, sections 11 and 26, to apply to Railways.

Trespass Act, 1871, sections eleven and twenty-six, shall be deemed to include a Railway whether or not it be fenced.

6. The owner or person in charge of any

Penalty for cattle-trespass within fences of a Railway.

cattle trespassing or straying within the fences of any Railway duly provided with fences and gates or bars in accordance with the rules applicable to such Railway, shall, on conviction before a Magistrate, be liable to a fine not exceeding ten rupees for each animal, in addition to any amount that may be recovered under the Cattle Trespass Act.

7. Whenever cattle are wilfully driven or permitted to go upon or across any Railway duly provided with fences and gates or bars in accordance with the rules applicable to such Railway, otherwise than for the purpose of crossing the Railway at a gate or bar provided as aforesaid, the person in charge of such cattle, or, if he cannot be identified, then the owner of the said cattle, shall, on conviction before a Magistrate, be liable to a fine not exceeding fifty rupees for each animal, in addition to any amount that may be recovered under the Cattle Trespass Act.

8. The Governor General in Council, or the Local Government, with the sanction of the Governor General in Council, may from time to time authorize subsidiary rules to be made—
in the case of a Railway worked by a Company or person,—by such Company or person;

and in the case of a Railway worked by Government,—by the Local Government, or an officer specially appointed in this behalf by the Local Government.

Every subsidiary rule so made shall, if consistent with the regulations made and allowed under section twenty-nine of the said Act No. XVIII of 1854, have the same force as such regulations.

9. The Governor General in Council may from time to time, by notification in the *Gazette of India*, empower any authority or concurrent authorities to exercise the powers of the Local Government under this Act and the Acts mentioned in section one in substitution for, or

concurrently with, such Local Government, and may specify the local limits within which such powers may be so exercised.

STATEMENT OF OBJECTS AND REASONS.

The necessity for amending Act No. XVIII of 1854, relating to Railways in India, has long been recognized, and a Bill dealing with the subject in a comprehensive manner has long been before the Council. But objections have been taken to the form of the Bill, which are admitted to have force, and the Government of India considers that the whole question must be reconsidered. Hence a sensible delay must arise before the required amendment of the law is effected.

Certain matters, however, have from time to time come before the Government, which it is not expedient to leave unprovided for till the new law can be passed, and the present Bill is introduced to meet those cases for which immediate legislation seems necessary.

The principal point is the modification of the law as to fencing and cattle trespass, which is in some respects too strict and in others too lax.

It is further necessary to correct defects in the definitions of some of the terms used in the old law.

Also, some extension is needed to the power of making regulations for the guidance of Railway servants.

R. STRACHEY.

The 20th March 1871.

WHITLEY STOKES,
Secy. to the Govt. of India.

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We, the undersigned, the Members of the Select Committee of the Council of

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“ Home Department, No. 500, dated 1st December 1868, forwarding letter from Government of Bengal, No. 5172, dated 29th October 1868, and enclosures.

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“ Home Department, No. 51, dated 21st January 1869, forwarding memorial of certain Parsi inhabitants of Bombay, dated 9th November 1868.

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“ Home Department, No. 109, dated 10th February 1869, forwarding despatch from Secretary of State for India, No. 41, dated 8th December 1868.

Minute by Hon'ble H. S. Maine, dated 4th September 1868.

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From Officiating Under Secretary to Government of Bengal, No. 560, dated 8th February 1869.

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Minute by Hon'ble Sir Dig Bijay Singh, dated 9th March 1869, and enclosures.

the Governor General of India for the purpose of making Laws and Regulations, to which the Bill to legalize marriages between certain Natives of India not professing the Christian Religion was referred, have the honour to report that we have considered the Bill and the papers noted in the margin.

It is the unanimous opinion of the Local Governments that the Bill as introduced should not be passed. They all, on the other hand, agree that the Bill would be unobjectionable if confined to the Bráhma Samájá, for whose benefit it was originally designed. We have, accordingly, narrowed its operation to the members of that sect.

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 " Secretary to Chief Commissioner, British Burma, No. 395, dated 2nd May 1869.
 " Officiating 1st Assistant Resident, Hyderabad, No. 2021, dated 1st July 1869, and enclosures.
 " Secretary to Government, North-Western Provinces, No. 1257a, dated 23rd August 1869, and enclosures.
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 Opinion by Hon'ble J. B. Norton, Advocate General, Madras, dated 11th August 1869.
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 From Bâbu Keshub Chandra Sen, dated 19th December 1870, forwarding opinion of the Advocate General, Calcutta.

We have provided that the parties shall, before the solemnization of the marriage, sign a declaration that they are members of the Brâhma Samâja, that they are unmarried, that the bridegroom has completed his age of 18 years and the bride her age of 14 years, that they are not related to each other within the degrees of consanguinity or affinity prohibited by the custom which would have regulated a marriage between them if the Act had not been passed, and (when the wife has not completed her age of eighteen) that the consent of her father or guardian has been given to the marriage.

We have provided that the marriage fee shall be payable immediately after the solemnization, and may, in case of non-payment, be recovered as if it were a fine.

In some cases, it appears that, in marriages heretofore solemnized between Brâhmas, the rule as to the age of the parties has not been strictly observed. In section (9) legalizing prior marriages, we have, accordingly, omitted the reference to clause 3 of section 2.

We have struck out the table of prohibited degrees, which, however well adapted to Bengal, was unsuited for other parts of India.

We recommend that the Bill thus altered be passed.

J. F. STEPHEN.

F. R. COCKERELL.

The 27th March 1871.

AMENDED BILL.

A Bill to legalize Marriages between members of the Brâhma Samâja.

WHEREAS it is expedient to legalize marriages between the members of the sect called the Brâhma Samâja when solemnized in accordance with the provisions of this Act; It is hereby enacted as follows:—

1. This Act may be cited as "The Brâhma Marriage Act, 1871."

Local extent. It extends to the whole of British India,

Commencement. and it shall come into force on the passing thereof.

Conditions of validity of Brâhma marriages. 2. Every marriage between members of the said sect shall be valid:—

(1). If it is solemnized in the presence of the Registrar hereinafter mentioned and of at least three credible witnesses, in whose hearing each of the parties makes the following declarations:—

"I, A B, am a member of the Brâhma Samâja."

"I, A B, declare in the presence of Almighty God that I take thee C D to be my lawful wedded wife [or husband]," or words to that effect:

(2). If the parties are unmarried:

(3). If the husband has completed his age of eighteen years, and the wife has completed her age of fourteen years:

(4). If the parties are not related to each other in any of the degrees of consanguinity or affinity prohibited by the custom which would have regulated marriages between them if this Act had not been passed; and

(5). If, in case the wife has not completed her age of eighteen years, the consent of her father or guardian has previously been given to the marriage.

*Explanation:—*A widower and a widow shall be deemed to be 'unmarried' within the meaning of this section.

3. It shall not be necessary for the Registrar to satisfy himself of the truth of the facts referred to in the second and following clauses of section two. But immediately before the solemnization of the marriage, a declaration in the form contained in the first schedule hereto annexed shall be signed by the following persons:—

(1) the parties to the intended marriage, and if the woman has not completed her age of eighteen years, her father or guardian, and

(2) three witnesses,

and shall be countersigned by the Registrar.

4. Every such marriage hereafter solemnized shall, as soon as may be after the solemnization thereof, be certified by such person as the Local Government from time to time appoints in this behalf for the District in which the mar-

riage is solemnized. He shall be called the Registrar of Bráhma Marriages, and he may be the Registrar appointed under the Indian Registration Act.

Such certificate shall be in the form contained in the second schedule hereto annexed, and shall be signed by the Registrar and three witnesses present at the marriage.

5. The husband shall pay a fee of two rupees to the Registrar, if the marriage is solemnized in his office, and if it is solemnized elsewhere within his District, such fee as the Local Government prescribes.

Every such fee shall be payable immediately after the solemnization of the marriage, and may, in case of non-payment, be recovered as if it were a fine imposed by the Magistrate of the District.

6. On payment or recovery of the fee the Registrar shall enter the declaration and certificate in a register to be kept by him for the purpose.

Such register shall at all reasonable times be open for inspection, and shall be admissible as evidence of the truth of the statements therein contained. Certified extracts therefrom shall on application be given by the Registrar on the payment to him by the applicant of two rupees for each such extract.

7. Every person required to subscribe or attest such declaration or certificate who wilfully neglects or omits to do, shall, on conviction of such neglect or omission, be punished by a fine not exceeding one hundred rupees.

8. Every person making, signing or attesting any such declaration or certificate containing a statement which is false, and which he either knows or believes to be false, or does not believe to be true, shall be deemed guilty of the offence described in section one hundred and ninety-nine of the Indian Penal Code.

9. Every person married under this Act who, during the life-time of his or her wife or husband, contracts any marriage shall be subject to the penalties provided in sections four hundred and ninety-four and four hundred and ninety-five of the Indian Penal Code for the offence of marrying again during the life-time of a husband or wife.

10. Every member of the said sect who, before the passing of this Act, has gone through any ceremony with the intent of thereby contracting marriage with any other person who, at the time of the said ceremony, was a member of the same sect, shall be deemed to have been married under this Act; if the marriage was solemnized in the presence of at least three witnesses, and if the conditions specified in section two, clauses two, four and five, were complied with in the case of such marriage.

FIRST SCHEDULE.

(See section 3).

Declaration.

We, *A B* [the bridegroom] and *C D* [the bride], hereby declare as follows:—

1. We, the said *A B* and *C D*, are members of the Bráhma Samája :

2. Neither of us is married :

3. I, *A B*, have completed my age of eighteen years and I, *C D*, have completed my age of fourteen years :

4. We believe that we are not related to each other in any of the degrees of consanguinity or affinity prohibited by the custom which would have regulated a marriage between us if the Bráhma Marriage Act had not been passed.

[And where the bride has not completed her age of eighteen years :]

5. The consent of *M N* the father [or guardian] of me, the said *C D*, has been given to a marriage between me, the said *C D*, and the said *A B*, and such consent has not been revoked.

6. We are aware that, if any statement in this declaration is false, and if the person making such statement either knows or believes it to be false, or does not believe it to be true, he or she is liable to imprisonment and also to fine.

(Signed) *A B* (the bridegroom).
C D (the bride).

Signed in our presence by the above named *A B* and *C D* :

G H,
I J, } (three witnesses).
K L,

[And when the bride has not completed her age of eighteen years :]

M N, the father [or guardian] of the above-named *C D*.

(Countersigned) *E F*,

Registrar of Bráhma Marriages for the District of _____
Dated the _____ day of _____, 18 ____.

SECOND SCHEDULE.

(See section 4).

Registrar's Certificate.

I, *E F*, certify that on the _____ of 18____ appeared before me *A B* and *C D*, each of whom in my presence and in the presence of three credible witnesses, whose names are signed hereunder, made the declarations required by the second section of the Bráhma Marriage Act, 1871, and I further certify that the said *A B* and *C D* are lawfully wedded husband and wife.

(Signed) *E F*,
Registrar of Bráhma Marriages
for the District of _____

G H,
I J, } (three witnesses).
K L,

Dated the _____ day of _____, 18 ____.

WHITLEY STOKES,
Secy. to the Govt. of India.



The Gazette of India.

Published by Authority.

SIMLA, SATURDAY, MAY 20, 1871.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced into the Council of the Governor General for making
Laws and Regulations, or published under Rule 19.

The following Bill was introduced into the Council of the Governor General for making Laws and Regulations on the 19th May 1871, and was referred to a Select Committee with instructions to make their report thereon in six weeks:—

No. 15 of 1871.

A Bill to give validity to the operation of the General Regulations and Acts within the Dehrá Dún.

Whereas it is necessary to give validity to the operation of the General Regulations and Acts within the tract of country called the Dehrá Dún; and to indemnify all officers and other persons who have acted in the Dehrá Dún under the said Regulations and Acts; It is hereby enacted as follows:—

1. The Regulations and Acts now in force in the district of Saharunpūr shall be deemed to have been lawfully in force in the tract of country called the Dehrá Dún from the 12th August 1829, or, in the case of Regulations and Acts passed subsequently to that date, from the date of the passing thereof.

2. All officers and other persons are hereby indemnified for anything done before the passing of this Act which might lawfully have been done if this Act had been in force; and no suit or other proceeding shall be maintained against any such officer or other person in respect of anything so done.

3. Nothing in this Act shall apply to that portion of the Dehrá Dún called Jounsar Bawur and referred to in section eleven of Act XXIV of 1864.

STATEMENT OF OBJECTS AND REASONS.

The tract of country known as the Dehrá Dún has been, on several occasions, removed by legislative enactment from one jurisdiction to another.

The final effect of these transfers was assumed to be that the Dehrá Dún was subject to the operation of the General Regulations and Acts, and for many years past the administration of justice in that locality has been conducted on that assumption.

In the case of *Dick v. Heseltine* the High Court ruled that the General Regulations and Acts were not legally in force in Dehrá Dún, and legislation for the purpose of giving validity to the past proceedings of the local courts, which by this decision were in effect declared to have been illegal, became necessary.

With this object a Bill to 'declare and consolidate the law relating to the local extent of the General Regulations and Acts, and the local limits of the jurisdictions of the High Courts and Chief Controlling Revenue Authorities,' which provides for the case of Dehrá Dún amongst others, was introduced into the Council more than a year ago. That measure is of a somewhat complex character, and considerable difficulty and consequent delay in the adjustment of its details, have been occasioned thereby.

Meanwhile, the state of things in Dehrá Dún caused by the misinterpretation of the law applicable to that tract of country calls for a more speedy remedy.

The object of the present Bill, therefore, which is to be regarded only as a temporary measure, to be eventually absorbed in the more comprehensive Consolidation Bill above referred to, is to give validity to the operation of the General Regulations and Acts within the Dehrá Dún, retrospectively; and to provide an indemnity for all acts done by those engaged in the local administration of that tract under a misapprehension of the law.

SIMLA, } F. R. COCKERELL.
The 17th May 1871. }

H. S. CUNNINGHAM,

Offg. Secy. to the Council of the
Govr. Genl. for making
Laws and Regulations.



The Gazette of India.

Published by Authority.

SIMLA, SATURDAY, MAY 27, 1871.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 19.

The following Bill was introduced into the Council of the Governor General for making Laws and Regulations on the 19th May 1871, and was referred to a Select Committee with instructions to make their report thereon in a fortnight:—

No. 15 of 1871.

A Bill to give validity to the operation of the General Regulations and Acts within the Dehrá Dún.

Whereas it is necessary to give validity to the operation of the General Regulations and Acts within the tract of country called the Dehrá Dún; and to indemnify all officers and other persons who have acted in the Dehrá Dún under the said Regulations and Acts; It is hereby enacted as follows:—

1. The Regulations and Acts now in force in the district of Saharunpúr shall be deemed to have been lawfully in force in the tract of country called the Dehrá Dún from the 12th August 1829, or, in the case of Regulations and Acts passed subsequently to that date, from the date of the passing thereof.

2. All officers and other persons are hereby indemnified for anything done before the passing of this Act which might lawfully have been done if this Act had been in force; and no suit or other proceeding shall be maintained against any such officer or other person in respect of anything so done.

3. Nothing in this Act shall apply to that portion of the Dehrá Dún called Jounsar Bawur from the operation of this Act. and referred to in section eleven of Act XXIV of 1864.

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SIMLA; } F. R. COCKERELL.
The 17th May 1871. }

H. S. CUNNINGHAM,

Offg. Secy. to the Council of the
Govr. Genl. for making
Laws and Regulations.

The following Bill was introduced into the Council of the Governor General for making Laws and Regulations on the 26th May 1871, and was referred to a Select Committee with instructions to make their report thereon in three weeks:—

No. 16 OF 1871.

A Bill to provide for the levy of rates on land in the Panjáb.

Whereas it is expedient to provide for the levy of rates on land in the Panjáb to be applied to local purposes; It is hereby enacted as follows:—

Short title. 1. This Act may be called
'The Panjáb Local Rates' Act,
1871.'

Local extent. It extends only to the territories for the time being under the government of the Lieutenant-Governor of the Panjáb;

Commencement. And it shall come into force on the passing thereof.

Interpretation-clause. 2. In this Act—

'Commissioner.' 'Commissioner' means the Commissioner of a Division;

'Deputy Commissioner.' 'Deputy Commissioner' means the Head Revenue Officer of a District;

'Land' means land assessed to the land-revenue, and includes land whereof the land-revenue has been wholly or in part released, compounded for, redeemed or assigned;

'Tenant' means any person using or occupying land, and liable to pay or deliver rent therefor;

'Landholder.' 'Landholder' means any person owning land chargeable under this Act;

'Annual value.'

'Annual value' means—

- (1) double the land-revenue for the time being assessed on any land, whether such assessment be leviable or not;
- (2) and, where the land-revenue has been permanently assessed, or has been wholly or in part compounded for or redeemed—double the amount which, but for such permanent assessment, composition or redemption, would have been leviable.

3. All land shall be liable to the payment of such rate as the Lieutenant-Governor from time to time directs, not exceeding three rupees per cent. on its annual value computed from the 1st April 1871.

Such rate shall be paid by the landholder independently of, and in addition to, any land-revenue assessed on land for the land-revenue of which he is responsible;

Provided that, in districts where a cess of two per cent. on the land-revenue is already levied for district roads, half the amount so levied shall be deemed to be a payment towards the rate leviable under this Act.

For the purposes of this section, the rate assessed on lands watered by canals, and known as the "water advantage rate," shall be deemed a portion of the land-revenue.

4. Whenever a rate is charged on a landholder in respect of lands held by a tenant with a right of occupancy holding at a favourable rent, fixed temporarily or permanently under the provisions of any Act, or any agreement or any arrangement at settlement, such landholder may realize from such tenant a share of the said rate, bearing the same proportion to the whole rate as the excess of the annual value over the rent paid by such tenant bears to half the annual value.

5. The proceeds of all rates levied under this Act shall be carried to the credit of the Local Government.

6. The Lieutenant-Governor shall from time to time assign from the funds at his disposal an amount to be applied in each district for expenditure on all or any of the following purposes:

- (1) the construction, repair and maintenance of roads and communications;
- (2) the construction and repair of school-houses, the maintenance and inspection of schools, the training of teachers, and the establishment of scholarships;
- (3) the construction and repair of hospitals, dispensaries, lunatic asylums, wells and tanks, the planting and preservation of trees, the payment of all charges connected with the purposes for which such buildings or works have been constructed, and any other local works likely to promote the public health, comfort or convenience.

The sum of such assignments in any one year shall not be less than seventy-five per cent. of the total sum levied under this Act in such district in the year in which the assignment is made.

7. In the case of works which benefit more districts than one, the Lieutenant-Governor may determine what proportion of the expenses of the work shall be borne by each of the districts benefited thereby, and such proportion shall be payable out of the assignments made as aforesaid to such districts respectively.

8. Any portion of such assignment remaining unexpended at the end of the financial year in which the assignment was made may, at the discretion of the Lieutenant-Governor, be re-assigned for expenditure in the same district, or may be applied for the benefit of the Panjáb, in such manner as the Lieutenant-Governor from time to time directs.

9. Accounts of the receipts in respect of all rates levied under this Act and of the assignments made under section six, shall be kept in each district.

Such accounts shall, at all reasonable times, be open to the inspection of the Local Committee hereinafter mentioned.

An abstract of such accounts shall be prepared annually in English and in the vernacular language of the district, and shall be open, at all reasonable times, to public inspection at suitable places within the district without the payment of any fee.

An abstract of such accounts shall also be published annually in the local official Gazette.

10. The Lieutenant Governor shall appoint, in each district, a committee, consisting of not less than six persons, for the purpose of determining how the amount mentioned in section six shall be applied, and of supervising and controlling such amount:

Provided that not less than one-third of the members of such committee shall be persons not in the service of Government, and owning or occupying land in the district, or residing therein:

The Lieutenant-Governor shall from time to time prescribe the manner in which the members of such committee shall be appointed or removed, and shall define the functions and authority of such committee.

11. Suits for the recovery from co-sharers, tenants or others of any sum on account of any rate imposed under this Act, and all suits on account of illegal exaction of such rate, or for the settlement of accounts, shall be cognizable by the Civil Courts.

12. In matters connected with the assessment and collection of any sum leviable under this Act, an appeal shall lie to the Commissioner from the order of the Deputy Commissioner, provided that such appeal be presented within thirty days from the date of the order.

The Commissioner's order on such appeal shall be final.

13. The Lieutenant-Governor may invest any officer subordinate to a Deputy Commissioner with all or any of the powers of a Deputy Commissioner for the purposes of this Act.

The orders passed by any officer so invested shall be subject to revision by the Deputy Commissioner of the District.

14. All sums due on account of any rate imposed under this Act shall be recoverable as if they were arrears of land-revenue due on the land on account of which the rate is payable.

15. The Lieutenant-Governor may, by notification from time to time,

(a) prescribe by what instalments and at what times such rate shall be payable, and by whom it shall be assessed, collected and paid;

(b) make rules consistent with this Act for the guidance of officers in matters connected with its enforcement;

(c) exempt wholly or in part any portion of the territories under his government from the operation of this Act, or exempt any lands from liability to pay the whole or any part of any rate under this Act;

(d) direct fresh measurements and vary the assessment accordingly.

Every notification under this section shall be published in the *Government Gazette, Panjáb*.

STATEMENT OF OBJECTS AND REASONS.

The Financial Resolution of the Government of India, No. 3334 of the 14th December 1870, having placed a limit on the sum available to the several Administrations for defraying the cost of provincial services and effecting local improvements, it is found that the sum at the disposal of the Local Government for these purposes is insufficient.

After carefully considering the opinions of the most experienced officers of the Province, the Lieutenant-Governor is satisfied that, so far as the Panjáb is concerned, the funds required can best be raised by imposing a light rate on land, a mode of raising local revenue with which the people of the Panjáb are familiar, which will call into play no new machinery for collection, and involve no minute or vexatious enquiries.

Accordingly, it is proposed to empower the Lieutenant-Governor to impose a rate on land not exceeding three per cent. on its annual value, this being computed at twice the land-revenue. Power is given to the Lieutenant-Governor to exempt any lands, either wholly or partially, from payment of the rate. The rate will be in addition to any cesses already levied, save in the case of districts wherein a road cess of two per cent. on land-revenue is collected. In the case of these districts, one per cent. out of the two per cent. will be merged in the present rate.

Similar Bills for the North-Western Provinces and Oudh have already been passed.

SIMLA;
The 22nd May 1871.

R. H. DAVIES.

H. S. CUNNINGHAM,

Offg. Secy. to the Council of the
Govt. Genl. for making
Laws and Regulations.



The Gazette of India.

Published by Authority.

SIMLA, SATURDAY, JUNE 3, 1871.

or Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced into the Council of the Governor General for making
Laws and Regulations, or published under Rule 19.

The following Bill was introduced into the Council of the Governor General for making Laws and Regulations on the 19th May 1871, and was referred to a Select Committee with instructions to make their report thereon in a fortnight:—

No. 15 of 1871.

A Bill to give validity to the operation of the General Regulations and Acts within the Dehrá Dún.

Whereas it is necessary to give validity to the operation of the General Regulations and Acts within the tract of country called the Dehrá Dún; and to indemnify all officers and other persons who have acted in the Dehrá Dún under the said Regulations and Acts; It is hereby enacted as follows:—

1. The Regulations and Acts now in force in the district of Saharunpúr shall be deemed to have been lawfully in force in the tract of country called the Dehrá Dún from the 13th August 1829, or, in the case of Regulations and Acts passed subsequently to that date, from the date of the passing thereof.

2. All officers and other persons are hereby indemnified for anything done before the passing of this Act which might lawfully have been done if this Act had been in force; and no suit or other proceeding shall be maintained against any such officer or other person in respect of anything so done.

3. Nothing in this Act shall apply to that portion of the Dehrá Dún called Jounsar Bawur from the operation of this Act. and referred to in section eleven of Act XXIV of 1864.

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The tract of country known as the Dehrá Dún has been, on several occasions, removed by legislative enactment from one jurisdiction to another. The final effect of these transfers was assumed to be that the Dehrá Dún was subject to the operation of the General Regulations and Acts, and for many years past the administration of justice in that locality has been conducted on that assumption.

In the case of *Dick v. Heseltine* the High Court ruled that the General Regulations and Acts were not legally in force in Dehrá Dún, and legislation for the purpose of giving validity to the past proceedings of the local courts, which by this decision were in effect declared to have been illegal, became necessary.

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Meanwhile, the state of things in Dehrá Dún caused by the misinterpretation of the law

applicable to that tract of country calls for a more speedy remedy.

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SIMLA; } F. R. COCKERELL.
The 17th May 1871. }

H. S. CUNNINGHAM,

Offg. Secy. to the Council of the
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A Bill to provide for the levy of rates on land in the Panjáb.

Whereas it is expedient to provide for the levy of rates on land in the Panjáb to be applied to local purposes; It is hereby enacted as follows:—

1. This Act may be called
Short title. 'The Panjáb Local Rates' Act, 1871.'

It extends only to the territories for the time being under the government of the Lieutenant-Governor of the Panjáb;

Commencement. And it shall come into force on the passing thereof.

Interpretation-clause. 2. In this Act—

'Commissioner.' 'Commissioner' means the Commissioner of a Division;

'Deputy Commissioner.' 'Deputy Commissioner' means the Head Revenue Officer of a District;

'Land' means land assessed to the land-revenue, and includes land whereof the land-revenue has been wholly or in part released, compounded for, redeemed or assigned;

'Tenant' means any person using or occupying land, and liable to pay or deliver rent therefor;

'Landholder.' 'Landholder' means any person owning land chargeable under this Act;

'Annual value.' 'Annual value' means—

- (1) double the land-revenue for the time being assessed on any land, whether such assessment be leviable or not;
- (2) and, where the land-revenue has been permanently assessed, or has been wholly or in part compounded for or redeemed—double the amount which, but for such permanent assessment, composition or redemption, would have been leviable.

3. All land shall be liable to the payment of such rate as the Lieutenant-Governor from time to time directs, not exceeding three rupees per cent. on its annual value computed from the 1st April 1871.

Such rate shall be paid by the landholder independently of, and in addition to, any land-revenue assessed on land for the land-revenue of which he is responsible:

Provided that, in districts where a cess of two per cent. on the land-revenue is already levied for district roads, half the amount so levied shall be deemed to be a payment towards the rate leviable under this Act.

For the purposes of this section, the rate assessed on lands watered by canals, and known as the "water advantage rate," shall be deemed a portion of the land-revenue.

4. Whenever a rate is charged on a landholder in respect of lands held by a tenant with a right of occupancy holding at a favourable rent, fixed temporarily or permanently under the provisions of any Act, or any agreement or any arrangement at settlement, such landholder may realize from such tenant a share of the said rate, bearing the same proportion to the whole rate as the excess of the annual value over the rent paid by such tenant bears to half the annual value.

5. The proceeds of all rates levied under this Act shall be carried to the credit of the Local Government.

6. The Lieutenant-Governor shall from time to time assign from the funds at his disposal an amount to be applied in each district for expenditure on all or any of the following purposes:

- (1) the construction, repair and maintenance of roads and communications;
- (2) the construction and repair of school-houses, the maintenance and inspection of schools, the training of teachers, and the establishment of scholarships;
- (3) the construction and repair of hospitals, dispensaries, lunatic asylums, wells and tanks, the planting and preservation of trees, the payment of all charges connected with the purposes for which such buildings or works have been constructed, and any other local works likely to promote the public health, comfort or convenience.

The sum of such assignments in any one year shall not be less than seventy-five per cent. of the total sum levied under this Act in such district in the year in which the assignment is made.

7. In the case of works which benefit more districts than one, the Lieutenant-Governor may determine what proportion of the expenses of the work shall be borne by each of the districts benefited thereby, and such proportion shall be payable out of the assignments made as aforesaid to such districts respectively.

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10. The Lieutenant Governor shall appoint, in each district, a committee, consisting of not less than six persons, for the purpose of determining how the amount mentioned in section six shall be applied, and of supervising and controlling such amount:

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The Lieutenant-Governor shall from time to time prescribe the manner in which the members of such committee shall be appointed or removed, and shall define the functions and authority of such committee.

11. Suits for the recovery from co-sharers, tenants or others of any sum on account of any rate imposed under this Act, and all suits on account of illegal exaction of such rate, or for the settlement of accounts, shall be cognizable by the Civil Courts.

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The Commissioner's order on such appeal shall be final.

13. The Lieutenant-Governor may invest any officer subordinate to a Deputy Commissioner with all or any of the powers of a Deputy Commissioner for the purposes of this Act.

The orders passed by any officer so invested shall be subject to revision by the Deputy Commissioner of the District.

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(a) prescribe by what instalments and at what times such rate shall be payable, and by whom it shall be assessed, collected and paid;

(b) make rules consistent with this Act for the guidance of officers in matters connected with its enforcement;

(c) exempt wholly or in part any portion of the territories under his government from the operation of this Act, or exempt any lands from liability to pay the whole or any part of any rate under this Act;

(d) direct fresh measurements and vary the assessment accordingly.

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Similar Bills for the North-Western Provinces and Oudh have already been passed.

SIMLA;

R. H. DAVIES.

The 22nd May 1871.

H. S. CUNNINGHAM,

Offg. Secy. to the Council of the
Govr. Genl. for making
Laws and Regulations.



The Gazette of India.

Published by Authority.

SIMLA, SATURDAY, JUNE 10, 1871.

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PART V.

Bills introduced into the Council of the Governor General for making
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Short title. 'The Panjáb Local Rates' Act, 1871.'

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Commencement. And it shall come into force on the passing thereof.

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(1) double the land-revenue for the time being assessed on any land, whether such assessment be leviable or not;

(2) and, where the land-revenue has been permanently assessed, or has been wholly or in part compounded for or redeemed—double the amount which, but for such permanent assessment, composition or redemption, would have been leviable.

3. All land shall be liable to the payment of such rate as the Lieutenant-Governor from time to time directs, not exceeding three rupees per cent. on its annual value computed from the 1st April 1871.

Such rate shall be paid by the landholder independently of, and in addition to, any land-revenue assessed on land for the land-revenue of which he is responsible:

Provided that, in districts where a cess of two per cent. on the land-revenue is already levied for district roads, half the amount so levied shall be deemed to be a payment towards the rate leviable under this Act.

For the purposes of this section, the rate assessed on lands watered by canals, and known as the "water advantage rate," shall be deemed a portion of the land-revenue.

4. Whenever a rate is charged on a landholder in respect of lands held by a tenant with a right of occupancy holding at a favourable rent, fixed temporarily or permanently under the provisions of any Act, or any agreement or any arrangement at settlement, such landholder may realize from such tenant a share of the said rate, bearing the same proportion to the whole rate as the excess of the annual value over the rent paid by such tenant bears to half the annual value.

Power to recover a share of rate from tenant.

5. The proceeds of all rates levied under this Act shall be carried to the credit of the Local Government.

Rates to be carried to general fund.

6. The Lieutenant-Governor shall from time to time assign from the funds at his disposal an amount to be applied in each district for expenditure on all or any of the following purposes:

Assignments for local purposes.

(1) the construction, repair and maintenance of roads and communications;

(2) the construction and repair of school-houses, the maintenance and inspection of schools, the training of teachers, and the establishment of scholarships;

(3) the construction and repair of hospitals, dispensaries, lunatic asylums, wells and tanks, the planting and preservation of trees, the payment of all charges connected with the purposes for which such buildings or works have been constructed, and any other local works likely to promote the public health, comfort or convenience.

The sum of such assignments in any one year shall not be less than seventy-five per cent. of the total sum levied under this Act in such district in the year in which the assignment is made.

7. In the case of works which benefit more districts than one, the Lieutenant-Governor may determine what proportion of the expenses of the work shall be borne by each of the districts benefited thereby, and such proportion shall be payable out of the assignments made as aforesaid to such districts respectively.

Works benefiting several districts.

8. Any portion of such assignment remaining unexpended at the end of the financial year in which the assignment was made may, at the discretion of the Lieutenant-Governor, be re-assigned for expenditure in the same district, or may be applied for the benefit of the Panjáb, in such manner as the Lieutenant-Governor from time to time directs.

Unexpended portion of assignment.

9. Accounts of the receipts in respect of all rates levied under this Act and of the assignments made under section six, shall be kept in each district.

Accounts to be kept.

Such accounts shall, at all reasonable times, be open to the inspection of the Local Committee hereinafter mentioned.

An abstract of such accounts shall be prepared annually in English and in the vernacular language of the district, and shall be open, at all reasonable times, to public inspection at suitable places within the district without the payment of any fee.

An abstract of such accounts shall also be published annually in the local official Gazette.

10. The Lieutenant-Governor shall appoint, in each district, a committee, consisting of not less than six persons, for the purpose of determining how the amount mentioned in section six shall be applied, and of supervising and controlling such amount:

Local Committee.

Provided that not less than one-third of the members of such committee shall be persons not in the service of Government, and owning or occupying land in the district, or residing therein:

The Lieutenant-Governor shall from time to time prescribe the manner in which the members of such committee shall be appointed or removed, and shall define the functions and authority of such committee.

11. Suits for the recovery from co-sharers, tenants or others of any sum on account of any rate imposed under this Act, and all suits on account of illegal exaction of such rate, or for the settlement of accounts, shall be cognizable by the Civil Courts.

Suits under Act cognizable by Civil Courts.

12. In matters connected with the assessment and collection of any sum leviable under this Act, an appeal shall lie to the Commissioner from the order of the Deputy Commissioner, provided that such appeal be presented within thirty days from the date of the order.

Limitation of appeals.

The Commissioner's order on such appeal shall be final.

13. The Lieutenant-Governor may invest any officer subordinate to a Deputy Commissioner with all or any of the powers of a Deputy Commissioner for the purposes of this Act.

Power to invest subordinate officers with powers of Deputy Commissioner.

The orders passed by any officer so invested shall be subject to revision by the Deputy Commissioner of the District.

14. All sums due on account of any rate imposed under this Act shall be recoverable as if they were arrears of land-revenue due on the land on account of which the rate is payable.

Recovery of rates.

15. The Lieutenant-Governor may, by notification from time to time,

Supplementary powers of Local Government.

(a) prescribe by what instalments and at what times such rate shall be payable, and by whom it shall be assessed, collected and paid;

(b) make rules consistent with this Act for the guidance of officers in matters connected with its enforcement;

(c) exempt wholly or in part any portion of the territories under his government from the operation of this Act, or exempt any lands from liability to pay the whole or any part of any rate under this Act;

(d) direct fresh measurements and vary the assessment accordingly.

Every notification under this section shall be published in the *Government Gazette, Panjáb*.

STATEMENT OF OBJECTS AND REASONS.

The Financial Resolution of the Government of India, No. 3334 of the 14th December 1870, having placed a limit on the sum available to the several Administrations for defraying the cost of provincial services and effecting local improvements, it is found that the sum at the disposal of the Local Government for these purposes is insufficient.

After carefully considering the opinions of the most experienced officers of the Province, the Lieutenant-Governor is satisfied that, so far as the Panjáb is concerned, the funds required can best be raised by imposing a light rate on land, a mode of raising local revenue with which the people of

the Panjáb are familiar, which will call into play no new machinery for collection, and involve no minute or vexatious enquiries.

Accordingly, it is proposed to empower the Lieutenant-Governor to impose a rate on land not exceeding three per cent. on its annual value, this being computed at twice the land-revenue. Power is given to the Lieutenant-Governor to exempt any lands, either wholly or partially, from payment of the rate. The rate will be in addition to any cesses already levied, save in the case of districts wherein a road cess of two per cent. on land-revenue is collected. In the case of these districts, one per cent. out of the two per cent. will be merged in the present rate.

Similar Bills for the North-Western Provinces and Oudh have already been passed.

SIMLA;
The 22nd May 1871. }

R. H. DAVIES.

H. S. CUNNINGHAM,

*Offg. Secy. to the Council of the
Govr. Genl. for making
Laws and Regulations.*



The Gazette of India.

Published by Authority.

SIMLA, SATURDAY, JUNE 24, 1871.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 19.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Draft Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 31st March 1871 :—

We, the members of the Select Committee to which the Evidence Bill has been referred,

From Officiating Under Secretary, Home Department, No. 423, dated 23rd October 1868, and enclosures.

From Assistant Secretary, Foreign Department, No. 333, dated 12th December 1868, and enclosure.

Remarks by the Hon'ble the Chief Justice, Bombay (no date).
by Hon'ble Justice Phear, dated 8th December 1868.

From Secretary to Chief Commissioner, British Burmah, No. 595—1, dated 1st December 1868.

From Assistant Secretary to Government of Bengal, Legislative Department, No. 37, dated 9th January 1869, and enclosure.

From Deputy Judge Advocate General of the Army, dated 26th January 1869, and enclosures.

From Officiating Under Secretary, Home Department, No. 258, dated 17th February 1869, forwarding memorial from Mukhtars and Revenue Agents, Howrah, dated 4th February 1869.

From Secretary to Indian Law Commissioners, dated 6th February 1869.

From Chief Secretary to Government, Fort St. George, No. 120, dated 18th March 1869, and enclosures.

From Secretary to Government of Bombay, No. 2971, dated 7th September 1869, and enclosures.

From Secretary to Government of Bombay, No. 3188, dated 24th September 1869, and enclosure.

Fifth Report of Her Majesty's Indian Law Commissioners on the Bill.

From Officiating Inspector General of Police, Panjab, No. 2557, dated 28th September 1870.

From Secretary to Government of India, Home Department, No. 1892, dated 18th October 1870, forwarding letter from Chief Commissioner, British Burmah, No. 61, dated 15th August 1870, and enclosures.

have the honour to report that we have considered the Bill and the papers noted in the margin.

After a very careful consideration of the draft prepared by the Indian Law Commissioners, we have arrived at the conclusion that it is not suited to the wants of this country.

We have recorded in a separate report the grounds on which this conclusion is based. They are in a few words that the Commissioners' draft is not sufficiently elementary for the officers for whose use it is designed, and that it assumes an acquaintance on their part with the law of England which can scarcely be expected from them. Our draft, however, though arranged on a different principle from theirs, embodies most of its provisions. In general,

it has been our object to reproduce the English Law of Evidence with certain modifications, most of which have been suggested by the Commissioners, though with some this is not the case. The English Law of Evidence appears to us to be totally destitute of arrangement. This arises partly from the circumstance that its leading terms are continually used in different senses, and partly from the circumstance that the Law of Evidence was formed by

degrees out of various elements, and in particular out of the English system of pleading and the habitual practice of the Courts of Common Law. For instance, the rule that evidence must be confined to points in issue is founded on the system of pleading. The rule that hearsay is no evidence is part of the practice of the Courts; but the two sets of rules run into each other in such an irregular way as to produce between them a result which no one can possibly understand systematically, unless he is both acquainted with the principles of a system of pleading which is being rapidly abolished, and with the every-day practice of the Common Law Courts, which can be acquired and understood only by those who habitually take part in it. This knowledge, moreover, must be qualified by a study of text-books which are seldom systematically arranged.

Many other circumstances, to which we need not refer, have contributed largely to the general result; but we may illustrate the extreme intricacy of the law, and the total absence of anything like system which pervades every part of it, by a single instance. In Mr. Pitt Taylor's work on Evidence it is stated that "ancient documents, when tendered in support of ancient possession," form the third exception to the rule which excludes hearsay. The question is whether A is entitled to a fishery. He produces a royal grant of the fishery to his ancestor. This fact the law describes as a peculiar kind of hearsay admissible by special exception. Surely this is using language in a most un instructive manner.

This being the case, we have discarded altogether the phraseology in which the English text-writers usually express themselves, and have attempted first to ascertain, and then to arrange in their natural order, the principles which underlie the numerous cases and fragmentary rules which they have collected together. The result is as follows:

Every judicial proceeding whatever has for its purpose the ascertaining of some right or liability. If the proceeding is criminal, the object is to ascertain the liability to punishment of the person accused; if the proceeding is civil, the object is to ascertain some right of property or of status, or the right of one party, and the liability of the other, to some form of relief.

All rights and liabilities are dependent upon and arise out of facts, and facts fall into two classes, those which can, and those which cannot, be perceived by the senses. Of facts which can be perceived by the senses, it is superfluous to give examples. Of facts which cannot be perceived by the senses, intention, fraud, good faith, and knowledge may be given as examples. But each class of facts has, in common, one element which entitles them to the name of facts—they can be directly perceived either with or without the intervention of the senses. A man can testify to the fact that, at a certain time, he had a certain intention, on the same ground as that on which he can testify that, at a certain time and place, he saw a particular man. He has, in each case, a present recollection of a past direct perception. Moreover, it is equally necessary to ascertain facts of each class in judicial proceedings, and they must in most cases be ascertained in precisely the same way.

Facts may be related to rights and liabilities in one of two different ways:

1. They may by themselves, or in connection with other facts, constitute such a state of things that the existence of the disputed right or liability would be a legal inference from them. From the fact that A is the eldest son of B, there arises of necessity the inference that A is by the law of England the heir-at-law of B, and that he has such rights as that status involves. From the fact that A caused the death of B under certain circumstances, and with a certain intention or knowledge, there arises of necessity the inference that A murdered B, and is liable to the punishment provided by law for murder.

Facts thus related to a proceeding may be called facts in issue, unless, indeed, their existence is undisputed.

2. Facts, which are not themselves in issue in the sense above explained, may affect the probability of the existence of facts in issue, and these may be called collateral facts.

It appears to us that these two classes comprise all the facts with which it can in any event be necessary for courts of justice to concern themselves, so that this classification exhausts all facts considered in their relation to the proceeding in which they are to be proved.

This introduces the question of proof. It is obvious that, whether an alleged fact is a fact in issue or a collateral fact, the Court can draw no inference from its existence till it believes it to exist; and it is also obvious that the belief of the Court in the existence of a given fact ought to proceed upon grounds altogether independent of the relation of the fact to the object and nature of the proceeding in which its existence is to be determined. The question is whether A wrote a letter. The letter may have contained the terms of a contract. It may have been a libel. It may have constituted the motive for the commission of a crime by B. It may supply proof of an *alibi* in favour of A. It may be an admission or a confession of crime; but whatever may be the relation of the fact to the proceeding, the Court cannot act upon it unless it believes that A did write the letter, and that belief must obviously be produced, in each of the cases mentioned, by the same or similar means. If, for instance, the Court requires the production of the original when the writing of the letter is a crime, there can be no reason why it should be satisfied with a copy when the writing of the letter is a motive for a crime. In short, the way in which a fact should be proved depends on the nature of the fact, and not on the relation of the fact to the proceeding.

The instrument by which the Court is convinced of a fact is evidence. It is often classified as being either direct or circumstantial. We have not adopted this classification.

If the distinction is that direct evidence establishes a fact in issue, whereas circumstantial evidence establishes a collateral fact, evidence is classified, not with reference to its essential qualities, but with reference to the use to which it is put; as if paper were to be defined, not by reference to its component elements, but as being used for writing or for printing. We have shown that the mode in which a fact must be proved depends on its nature, and not on the use to be made of it. Evidence, therefore, should be defined, not with reference to the nature of the fact which it is to prove, but with reference to its own nature.

Sometimes the distinction is stated thus: Direct evidence is a statement of what a man has actually seen or heard. Circumstantial evidence is something from which facts in issue are to be inferred. If the phrase is thus used, the word *evidence*, in the two phrases, (*direct evidence* and *circumstantial evidence*) opposed to each other, has two different meanings. In the first, it means testimony; in the second, it means a fact which is to serve as the foundation for an inference. It would indeed be quite correct, if this view is taken, to say 'Circumstantial evidence must be proved by direct evidence.' This would be a most clumsy mode of expression, but it shows the ambiguity of the word "*evidence*," which means either—

- (1) words spoken or things produced in order to convince the Court of the existence of facts; or
- (2) facts of which the Court is so convinced which suggest some inference as to other facts.

We use the word '*evidence*' in the first of these senses only, and so used it may be reduced to three heads—1, oral evidence; 2, documentary evidence; 3, material evidence.

Finally, the evidence by which facts are to be proved must be brought to the notice of the Court and submitted to its judgment, and the Court must form its judgment respecting them.

These general considerations appear to us to supply the groundwork for a systematic and complete distribution of the subject as follows:—

I.—Preliminary.

II.—The relevancy of facts to the issue.

III.—The proof of facts according to their nature, by oral, documentary or material evidence.

IV.—The production of evidence.

V.—Procedure.

We have accordingly distributed the subject under these heads, in the manner which we now proceed to describe somewhat more fully.

I.—PRELIMINARY.

Under this head we have defined "*fact*," "*facts in issue*," "*collateral facts*," "*a document*," "*evidence*," "*proof*" and "*proved*," "*necessary inference*" and "*presume*." We have also laid down in general terms the duty of the Court.

Of our definitions of "*fact*," "*facts in issue*," "*collateral facts*," and "*evidence*," we need say no more than that they are framed in accordance with the principles already stated. We may, however, shortly illustrate the effect of the definition of evidence.

It will make perfectly clear several matters over which the ambiguity of the word, as used in English law, has thrown much confusion. The subject of circumstantial evidence will be distributed into its elements, and will be dealt with thus: The question is whether A committed a crime. The facts are—that he had a motive, displayed by statements of his own, for it; that the scene of the crime shows footmarks which correspond with his feet; that he was in possession of property which might have been procured by it, and that he wrote a letter indicating his guilt. On turning to chapter II, it will be found that all these are relevant facts, either as motive, incidents of facts in issue, effects of facts in issue, or conduct influenced by facts in issue. On turning to chapter III, it will be seen how each of these facts must be proved, namely, the statements displaying motive, by the direct oral evidence of some one who says he heard them; the footmarks, by the direct oral evidence of some one who says he saw them; the possession of the property, by the production of the property in Court, and by the direct oral evidence of some one who had seen it in the prisoner's possession; and the letter, by the production of the letter itself, or secondary evidence of it, if the case allows of secondary evidence.

So the phrase "*hearsay evidence*," which, as the Commissioners observe, is used by English writers in so vague and unsatisfactory a manner, finds no place in our draft, and we hope we have

avoided the possibility of any confusion in connection with it. Chapter II provides specifically, and in a manner which corresponds, on the whole (though with some modifications), with the English law, in what cases the statements and opinions of third persons as to relevant facts shall, and in what cases they shall not, be themselves relevant, and chapter V, On Proof by Oral Evidence, provides that oral evidence shall in all cases be direct, on whatever ground the fact which it is to establish may be relevant to the issue: that is to say, if the fact is one which could be seen, it must be established by a witness who says he saw it, if it could be heard, by a witness who says he heard it, whether it is fact in issue, or a collateral fact. These provisions distribute the different things described by the phrase "hearsay evidence" in the same way in which the different things described by the phrase "circumstantial evidence" are distributed by the other provisions.

So, our definition does away with a confusion which arises out of the double meaning of the word 'evidence' in the phrases "primary" and "secondary evidence." "Primary evidence" sometimes means a relevant fact, and at other times the proof of a document by its production as opposed to proof by a copy. In our draft, "primary" and "secondary" are distinctly defined, and confined to an unambiguous meaning. 'Evidence' in each case means words spoken or things (documents or not) shown to the Court.

Finally, we have substituted, for the phrase "conclusive evidence," the phrase "necessary inference." The phrase "conclusive evidence" is not open to objection on the ground of obscurity or ambiguity, but the word "evidence" in it means, not what we understand by evidence, but a fact established by evidence from which a particular inference necessarily follows. Our phrase, therefore harmonises with the rest of our draft, whereas "conclusive evidence" would not.

The definitions of "proof," "proved" and "moral certainty" require some comment. The definition of "proof" is subordinate to that of "proved," which is, that a fact is said to be proved in two cases, that is to say when the Court after hearing the evidence respecting it—

- (1) believes in its existence; or
- (2) thinks its existence so probable that a reasonable man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

This degree of probability we describe as "moral certainty," and we provide that no fact shall be regarded as morally certain unless the evidence is such as to render its non-existence improbable. This is as near an approach as we have been able to make to a distinct equivalent for the phrase "reasonable doubt," which is usually employed by English Judges in leaving questions of fact to a jury. The question "When is doubt reasonable?" is one which cannot be completely answered; for at bottom it is a question, not of science, but of prudence, and our definition of the word "proved" is meant to make this plain. We have, however, attached to it the negative condition that a reasonable man ought not to be morally certain of a conclusion, merely because it is probable, if other conclusions are also probable. It is easier to illustrate this principle than to state, without a prolonged abstract discussion, which would be out of place on the present occasion, the general grounds on which it rests. Our illustrations are meant to point out to Judges that they are not to convict A of an offence which must have been committed either by him or by B, unless circumstances exist which make it improbable that the offence was committed by B. We have not attempted to carry the matter further. We believe that in all countries, and in this country more than in any other, it is absolutely necessary to leave to Judges a wide discretion as to the risk of error which they choose to incur in coming to a decision, and that this is a matter of prudence and practice, as to which rules ought to be laid down, rather with the view of guiding, than with the view of fettering, discretion.

The last provision, in the preliminary part, to which we would call attention, defines in very general terms the duty of the Court in deciding questions of fact. Its generality appeared to us to render the preliminary, rather than the concluding chapter, the proper place for it. This section declares that the duty of the Court is to determine questions of fact by drawing inferences—

- (1) from the evidence given to the facts alleged to exist;
- (2) from facts proved to facts not proved;
- (3) from the absence of evidence which might have been given;
- (4) from the admissions and conduct of the parties, and generally from the circumstances of the case.

We have said nothing of the principle on which these inferences are to be drawn, as that is a matter of logic, and does not belong specially to the subject of judicial evidence; but we wish to point out and put distinctly upon record the fact, that to infer, and not merely to accept or register evidence, is in all cases the duty of the Court. One of the many fallacies which owe their origin to the ambiguity of the word "evidence," and the looseness with which it is used, is the common assertion that direct evidence leaves no room for inference, whereas indirect or circumstantial evidence does. In fact, all evidence whatever is useful only as the groundwork for inferences, of which the inference that the facts which the witness alleges to exist do or did

actually exist, is very often the most difficult to draw. The truth is, that to infer in one or other of the different shapes which we have stated is the great duty of the Judge in every case whatever, and we have thought it desirable to point this out in the plainest and broadest way.

We have added two qualifications only to this general rule: (1) that, when the law declares an inference to be necessary, the Court shall draw it, and shall not allow its truth to be contradicted; (2) that, when the law directs the Court to presume a fact, it shall infer its existence till the contrary appears. We have treated in detail of necessary inference and presumptions in other parts of the Bill.

II.—THE RELEVANCY OF FACTS.

We have already pointed out the place which, in our opinion, belongs to this subject in the law of evidence. The question, What facts may you prove? obviously lies at the root of the whole matter, and unless a plain and full answer is given to the question, it is impossible to state the law systematically. The answer to the question is, we think, to be found in several of the wide exceptions which are made by English text-writers to the wide exclusive rules—that evidence must be confined to the points in issue, that hearsay is no evidence, and that the best evidence must be given, though other parts of the same exceptions are to be found in different branches of the law. We think, however, that by a comparison and collection of these exceptions we have succeeded in forming a collection of positive rules as to the relevancy of facts to the issue, which will admit every fact which a rational man could wish to have before him in investigating any question of fact.

These rules declare to be relevant—

- 1, all facts in issue;
- 2, all collateral facts, which
 - (a) form part of the same transaction;
 - (b) are the immediate occasion, cause, or effect of facts in issue;
 - (c) show motive, preparation, or conduct affected by a fact in issue;
 - (d) are necessary to be known in order to introduce or explain relevant facts;
 - (e) are done or said by a conspirator in furtherance of a common design;
 - (f) are either inconsistent with any fact in issue; or inconsistent with it, except upon a supposition which should be proved by the other side; or render its existence, or non-existence morally certain, according to the definition of moral certainty given above;
 - (g) affect the amount of damages in cases where damages are claimed;
 - (h) show the origin or existence of a disputed right or custom;
 - (i) show the existence of a relevant state of mind and body;
 - (k) show the existence of a series of which a relevant fact forms a part; or
 - (l) show (in certain cases) the existence of a given course of business.

The remainder of the chapter throws into a positive shape what in English law forms the exceptions to the rule, excluding the various matters described as hearsay. They relate to—

- the conduct of the parties on previous occasions;
- the statements of the parties on previous occasions;
- previous judgments;
- statements of third persons;
- opinions of third persons.

1. In reference to the conduct of the parties on previous occasions, we embody in three sections the existing law of England as to evidence of character, with some modifications. We include, under the word 'character,' both reputation and disposition, and we permit evidence to be given of previous convictions against a prisoner for the purpose of prejudicing him. We do not see why he should not be prejudiced by such evidence, if it is true.

2. Under the head of The Statements of the Parties on other Occasions, we deal with the question of admissions, as to which we have not materially altered the existing law.

We have not thought it necessary to transfer from their present position in the Code of Criminal Procedure the rules as to confessions made to the Police. This appears to us to be a special matter relating rather to the discipline of the police than to the principles of evidence.

3. Previous judgments appear to follow naturally upon previous statements. Under this head we deal with the question of *res judicata*.

We have not attempted to deal with the question of the bar of suits by previous judgments between the same parties. This is a question of procedure rather than of evidence, and will be properly dealt with whenever the Codes of Civil and Criminal Procedure are re-enacted. We have, on the other hand, dealt in substantial accordance with the principles of the law of England with the question of the relevancy of judgments between strangers. For the sake of simplicity, and in order to avoid the difficulty of defining or enumerating judgments *in rem*, we have adopted the statement of the law by Sir Barnes Peacock in *Kunya Lal v. Rodha Churn*, 7, Suth. W. R., 339.

4. As to statements by third persons. We have made one considerable alteration in the existing law by admitting, generally, statements made by third persons about relevant facts, if attended by conduct which confirms their truth, or if they refer to facts independently proved, provided that the person making them appears to the Court to have special means of knowledge. We have given several illustrations of this, the strongest of which is suggested by Mr. Pitt Taylor. A captain about to sail on a voyage carefully examines the ship, declares his belief that she is sea-worthy, and embarks on her with his family and property uninsured. Statements of this sort are surely most unlikely to be false. Evidence of such statements will be admissible under this section, whether the person who makes them is living or dead, producible or not. Some of them would probably be admissible under the English rule which admits statements explanatory of conduct, but as the conduct explained must be relevant, and as no clear definition of relevancy is given by the law of England, it is very difficult to say how far this rule extends.

The next exception refers to statements made by a person who is dead or cannot be found or produced without unreasonable delay or expense. We declare such statements to be relevant if they relate to the cause of the person's death, or are made in the ordinary course of business, or express an opinion as to the existence of a public right, or state the existence of any relationship as to which the party had special means of knowledge, or when they are made in family pedigrees, titles, deeds &c. We have omitted the restrictions placed by the law of England on the admission of dying declarations and statements about relationship, and as to the necessity that statements should be opposed to the pecuniary interest of the party making them, on the ground that they ought to affect the weight rather than the admissibility of what is, at best, to use Bentham's expression, "makeshift evidence."

We also provide for the admissibility of statements in public or official books, and (in certain cases) of evidence given in previous judicial proceedings.

5. The cases in which the opinions of third persons are relevant are dealt with in sections 44 to 50.

They declare to be relevant the opinions of experts, opinions as to handwriting, opinions as to usages, and opinions as to relationship and the grounds of such opinions.

This completes that part of the Bill which relates to the relevancy of facts. In the particulars stated, and in some others of minor importance, which for the sake of brevity we have not noticed, it modifies the law of England; but we believe that, substantially, it represents that part of the law which is contained in (amongst others) the rules, together with the exceptions to the rules, that evidence must be confined to points in issue; that the best evidence must be given, and that hearsay is no evidence, though these rules include other matters which we treat of under other heads.

III.—PROOF.

The second chapter having decided what facts are relevant, we proceed to show how a relevant fact is to be proved.

In the first place, the fact to be proved may be one of so much notoriety that the Court will take judicial notice of it, or it may be admitted by the parties. In either of these cases no evidence of its existence need be given. Chapter III, which relates to judicial notice, disposes of this subject. It is taken in part from Act II of 1855, in part from the Commissioners' draft Bill, and in part from the Law of England.

If evidence has to be given of any fact, that evidence must be either oral, documentary, or material, and we proceed in the following chapters to deal with the peculiarities of each of these three kinds of evidence. There is, however, one topic which applies to all of them, of which we treat in Chapter IV. This is the distinction between primary and secondary evidence. As we have already shown, the phrase is ambiguous. We regard it as a legal way of recognizing the obvious principle that the best way of finding out the contents of a document is to read it yourself, and we have accordingly defined primary and secondary evidence thus: in the case of documents or other material things, the document or thing itself is primary evidence. A copy, model, or oral description is secondary evidence. In all other cases oral evidence is primary.

We next proceed (Chapters V, VI, VII and VIII) to the question of proof by the various kinds of evidence successively, namely, oral, documentary, and material. With regard to oral evidence, we provide that it must in all cases whatever, whether it is primary or secondary, and whether the fact to be proved is a fact in issue or collateral, be direct. That is to say, if the fact to be proved is one that could be seen, it must be proved by some one who says he saw it. If it could be heard, by some one who says he heard it, and so with the other senses. We also provide that, if the fact to be proved is the opinion of a living and producible person, or the grounds on which such opinion is held, it must be proved by the person who holds that opinion on those grounds.

We have, however, provided that if the fact to be proved is the opinion of an expert who cannot be called (which is the case in the majority of cases in this country), and if such opinion has been expressed in any published treatise, it may be proved by the production of the treatise.

This provision, taken in connection with the provisions on relevancy contained in Chapter II, will, we hope, set the whole doctrine of hearsay in a perfectly plain light, for their joint effect is this—

(1) the sayings and doings of third persons are, as a rule, irrelevant, so that no proof of them can be admitted;

(2) in some excepted cases they are relevant;

(3) every act done or word spoken, which is relevant on any ground, must (if proved by oral evidence) be proved by some one who saw it with his own eyes, or heard it with his own ears.

With regard to the chapters which relate to the proof of facts by documentary evidence, and the cases in which secondary evidence may be admitted, we have followed, with few alterations, the existing law. We may observe that Chapter VII contains most of the few presumptions which we have thought it right to introduce into the Bill. They are presumptions which in almost every instance will be true—as to the genuineness of certified copies, gazettes, books purporting to be published at particular places, copies of depositions, &c.

We have inserted a few provisions in Chapter VIII as to material evidence. They reproduce the practice and, as we believe, the law of England, upon this subject, though no distinct provisions about it and few judicial decisions upon it are, so far as we are aware, to be found in English law-books.

On the subject of the exclusion of oral evidence of a contract, &c., reduced to writing, we have (in Chapter IX) simply followed the law of England and the Commissioners' draft.

IV.—THE PRODUCTION OF PROOF.

From the question of the proof of facts, we pass to the question of the manner in which the proof is to be produced, and this we treat under the following heads:—

The burden of proof (Chapter X):

Witnesses (Chapter XI):

The administration of oaths (Chapter XII):

Examination of witnesses (Chapter XIII):

With regard to the burden of proof, we lay down the broad rules, that the general burden of proof is on the party who, if no evidence at all were given, would fail, and that the burden of proving any particular fact is on the party who affirms it. These are the well-established English rules, and appear to us reasonable in themselves. We have not followed the precedent of the New York Code in laying down a long list of presumptions, agreeing with the Indian Law Commissioners in the opinion that it is better not to fitter the discretion of the Judges. We have however admitted one or two such presumptions to a place in the Code, as, in the absence of an express rule, the Judges might feel embarrassed. These are—the presumption of death from seven years' disappearance, and the presumption of partnership from the fact of acting as partners.

We may observe that we have disposed, in an illustration, of a matter in which the laws of several countries contain elaborate, and we think somewhat arbitrary, provisions, the presumption to be made in the case of the death of several persons in a common catastrophe. We treat it as an instance of the rule as to the burden of proof. The person who affirms that A died before B must prove it. This is the principle adopted by the English Courts.

We follow the English law as to legitimacy being a necessary inference from marriage and cohabitation, and we adopt one or two of the rules of English law as to estoppel.

In the chapter as to the examination of witnesses, we have been careful to interfere as little as possible with the existing practice of the Courts which in the Mofussil Courts and under the Code of Civil Procedure is of necessity very loose and much guided by circumstances, but we have put into propositions the rules of English law as to the examination and cross-examination of witnesses.

We have also considered it necessary, having regard to the peculiar circumstances of this country, to put into the hands of the Judge an amount of discretion as to the admission of evidence which, if it exists by law, is at all events rarely or never exercised in England. We expressly empower him to ask any questions upon any facts relevant or irrelevant, at any period of the trial, and we expressly declare that it is his duty in criminal cases, if he thinks that the public interest requires it, not merely to receive and adjudicate upon the evidence submitted to him by the parties, but also "to enquire to the utmost into the truth of the matter before him." The object of these provisions is to define simply and clearly the duties and the position of the Judges and those who practise before them. The English system, under which the Bench and the Bar act together and play their respective parts independently, and the professional organization on which it rests, have no doubt great advantages; but in this country such a system does not as yet exist, and will not for a very long course of time be introduced. In the Mofussil, generally speaking, the great mass of cases are conducted without the assistance of a Bar, and when advocates are employed there, they are usually brought from a distance, and have to appear before Judges who have not had the same professional training as English Judges, and are liable to be intimidated by advocates whose technical knowledge of law is greater than their own, and to whom the extremely intricate system of appeal which prevails in this country gives a power over the Judges unlike anything which exists in England. For this reason we have thought it necessary to strengthen the hands of the Judges and to enable them to act efficiently and promptly as the representatives of the public interest.

In connection with this subject, we may refer to some provisions which we have inserted in order to prevent the abuse of the power of cross-examination to credit. We believe the existence of that power to be essential to the administration of justice, and we believe it to be liable to great abuses. The need for the power and the danger of its abuse are proved by English experience, but in this country litigation of various kinds, and criminal prosecutions in particular, are the great engines of malignity, and it is accordingly even more necessary here than in England, both to permit the exposure of corrupt motives and to prevent the use of the power of exposure as a means of gratifying malice. We have accordingly provided as follows:

Such questions may relate either to matters relevant to the case, or to matters not relevant to the case. If they relate to matters relevant to the case, we think that the witness ought to be compellable to answer, but that his answer should not afterwards be used against him.

If they relate to matters not relevant to the case, except in so far as they affect the credit of the witness, we think that the witness ought not to be compelled to answer. His refusal to do so would, in most cases, serve the purpose of discrediting him, as well as an express admission that the imputation conveyed by the question was true.

In order to protect witnesses against needless questions of this kind, we enact that any advocate who asks such questions without written instructions (which the Court may call upon him to produce, and may impound when produced) shall be guilty of a contempt of Court, and that the Court may record any such question if asked by a party to the proceedings. The record of the question or the written instructions are to be admissible as evidence of the publication of an imputation intended to harm the reputation of the person affected, and such imputations are not to be regarded as privileged communications, or as falling under any of the exceptions to section four hundred and ninety-nine of the Indian Penal Code, merely because they were made in the manner stated. Upon a trial for defamation, it would of course be open to the person accused to show, either that the imputation was true, and that it was for the public good that the imputation should be made (Ex. 1, section 449, I. P. C.), or that it was made in good faith for the protection of the interest of the person making it or of any other person (Ex. 9). This is the only method which occurs to us of providing at once for the interests of a *bona fide* questioner and an innocent witness.

In the same spirit, we have empowered the Court, in general terms, to forbid indecent and scandalous inquiries, unless they relate to facts in issue (as defined above), or to matters absolutely necessary to be known in order to determine whether the facts in issue existed; and also to forbid questions intended to insult or annoy.

We prefer this general power to the sections drawn by the Commissioners, which forbid questions to married persons "which substantially amount to inquiring whether that person has had sexual intercourse forbidden to him or her by the law to which he or she is subject," and "questions regarding the occurrence of sexual intercourse between a husband and wife, except in the case of Christians, where the suit is for a decree of nullity of marriage on the ground of bodily incapacity." We should regard these rules as dangerous. It is possible to imagine numerous cases in which it might be highly important to show that a married person was living with some one who was not her husband or his wife. A woman brings a false accusation against her servant. The motive is revenge for the discovery by the servant of an intrigue by the mistress. A married man comes to prove an *alibi* on behalf of his mistress. A woman sues a married man on a bond. He pleads that the consideration was adultery. In all these cases, and so in many others which might be suggested, it appears to us that it would be absolutely necessary to admit such evidence as is referred to. As to questions relating to sexual intercourse between husband and wife, we think it better to forbid indecent and scandalous inquiries in general terms, than to lay down a positive rule which, in possible cases might produce hardship.

Finally, we deal (Chapter XV) with the question of the improper admission or rejection of evidence.

We provide in substance that in regular appeal each Court successively shall decide for itself to what evidence it will have regard. As for special appeals, we provide that if evidence is said to be improperly admitted, the objection must be taken before the inferior Appellate Court, and the Court called upon to say what its decision would be if the evidence objected to were rejected. If evidence is improperly rejected, we would permit the High Court either to look into the facts and deliver final judgment, or to remand the case.

Finally, we recommend that the draft Bill, together with this report, should be circulated for the opinion of the Local Governments.

J. F. STEPHEN.
J. STRACHEY.
F. S. CHAPMAN.
F. R. COCKERELL.
J. F. D. INGLIS.
W. ROBINSON.

The 31st March 1871.

THE INDIAN EVIDENCE BILL.

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SCHEDULE.

THE INDIAN EVIDENCE BILL.

WHEREAS it is expedient to consolidate, define and amend the Law of Evidence; It is hereby enacted as follows:—

Preamble.

PART I.

RELEVANCY OF FACTS.

CHAPTER I.—PRELIMINARY.

1. This Act may be called "The Indian Evidence Act."

Short title.

Extent. It extends to the whole of British India, and applies only

(1) to proceedings in Court, in the High Courts in their original and appellate, civil and criminal, jurisdiction;

(2) to any proceedings in Court to which the Codes of Civil or Criminal Procedure are

applicable, or which are taken or held under the Indian Succession Act or the Indian Divorce Act;

(3) to proceedings under commissions to take evidence;

(4) to proceedings in Court in Small Cause Courts;

Commencement of Act. and it shall come into force on the first day of May 1872.

2. On and from that day the following laws shall be repealed:—

(1.) All rules of evidence other than those contained in any Statute, Act or Regulation in force in any part of British India and not hereby expressly repealed.

(2.) All such rules, laws and regulations as were made for the territories known from time to time as 'Non-Regulation Provinces,' otherwise than in conformity with the provisions of the 3 & 4 Wm. IV, c. 85, and of the 16 & 17 Vic., c. 95, and are referred to in the twenty-fifth section of 'The Indian Councils' Act 1861,' in so far as they relate to any matter herein provided for.

(3.) The enactments mentioned in the schedule hereto to the extent specified in the third column of the said schedule.

But nothing herein contained shall affect any provision of any Act of Parliament, or of any other Act or Regulation not hereby expressly repealed.

3. In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:—

"Court" includes all Judges and Magistrates, and all persons legally authorised to take evidence, and shall be interpreted wherever it occurs with reference to the provisions of chapter XIV, as to the duties of Judges and Juries, respectively.

"Fact" means and includes

(1) any thing, state of things, or relation of things, capable of being perceived by the senses;

(2) any mental condition, of which any person is conscious.

Illustrations.

(a.) That there are certain objects arranged in a certain position, in a certain place, is a fact.

(b.) That a man said certain words, is a fact.

(c.) That a man holds a certain opinion, has a certain intention, acts in good faith or fraudulently, or uses a particular word in a particular sense, is a fact.

"Facts in issue." "Facts in issue" means and includes

(a) every fact which any Court records as an issue of fact under the provisions of the law, the time being relating to Civil Procedure;

(b) any fact, of which any party to any suit or proceeding does not admit the existence, and from which, either by itself or in connection with other facts, the existence, non-existence, nature,

or extent of any right, liability, or disability, asserted or denied in any such suit or proceeding necessarily follows.

Illustrations.

A is accused of the murder of B and claims to be tried.

The following facts may be in issue :—

That A caused B's death.

That A intended to cause B's death.

That A had received grave and sudden provocation from B.

That A at the time of doing the act which caused B's death was, by reason of unsoundness of mind, incapable of knowing its nature.

"Collateral facts" are facts which, not being themselves in issue, tend to prove or disprove the existence of facts in issue.

"Document" means any thing made capable in any manner of conveying a meaning.

Illustrations.

The following things are documents :—

Writings, printed papers, photographs of writings, an I. O. U., an inscription on a tombstone, a caricature, a message written in cypher, an architectural plan.

"Evidence." "Evidence" means and includes

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry ;

such statements are called oral evidence ;

(2) all documents produced for the inspection of the Court ;

such documents are called documentary evidence ;

(3) all material things other than documents produced for the inspection of the Court ;

such things are called material evidence.

"Proof" is the process of producing evidence in order that facts may be proved or disproved.

A fact is said to be proved when, after considering the evidence so produced, the Court either believes it to exist, or considers its existence so probable that, under the circumstances of the particular case, a prudent man ought to act upon the supposition that it exists.

"Proved." A fact is said to be disproved when, after considering the evidence so produced, the Court either believes that it does not exist, or considers its non-existence so probable that, under the circumstances of the particular case, a prudent man ought to act upon the supposition that it does not exist.

A fact is said to be disproved when, after considering the evidence so produced, the Court either believes that it does not exist, or considers its non-existence so probable that, under the circumstances of the particular case, a prudent man ought to act upon the supposition that it does not exist.

A fact is said not to be proved when it is neither proved nor disproved.

The existence or non-existence of a fact probable to the degree necessary for proof or disproof is said to be "morally certain."

4. The Court shall not regard any fact as morally certain unless it is of opinion that every supposition consistent with its non-existence is improbable.

Moral certainty.

Illustrations.

(a.) A credible witness affirms that he witnessed a fact of ordinary occurrence, and which, if it occurred, he must have had an opportunity of observing.

Here the possible suppositions are—

(1) that the fact occurred ;

(2) that the witness is mistaken ; and

(3) that the witness is telling an untruth.

But, by the supposition, (2) and (3) are improbable. Therefore, every supposition consistent with the non-existence of the fact is improbable.

(b.) The circumstances of a case are such that a given crime must have been committed by A or B.

The crime was one which required great physical strength. A is a strong man, B a weak woman.

The crime was one for which A had a strong motive, and against which B had a strong motive.

These facts make every supposition except that of A's guilt improbable.

Explanation.—The Court need not regard a fact as morally certain, merely because every supposition consistent with its non-existence is improbable.

Illustration.

In illustration (a) the Court is not bound to believe the witness.

5. Courts shall form their opinions on matters of fact by drawing inferences from the evidence produced to the existence of the facts alleged ;

(1) from the evidence produced to the existence of the facts alleged ;

(2) from facts proved or disproved to facts not proved ;

(3) from the absence of witnesses who, or of evidence which, might have been produced ;

(4) from the admissions, statements, conduct and demeanour of the parties and witnesses, and generally from the circumstances of the case.

6. When any inference is declared in this Act to be necessary, the Court shall in all cases draw that inference, and shall not permit proof that it is false.

When the Court is directed by this Act upon the proof of any fact, or upon the production of any document, to presume the existence of any fact, it shall, when the fact is proved, or when the document is produced, regard as true the fact which it is directed to presume, unless and until the contrary appears or is proved, or unless after considering the whole evidence on the matter it is of opinion that such fact is not proved.

Presumptions. When the Court is directed by this Act upon the proof of any fact, or upon the production of any document, to presume the existence of any fact, it shall, when the fact is proved, or when the document is produced, regard as true the fact which it is directed to presume, unless and until the contrary appears or is proved, or unless after considering the whole evidence on the matter it is of opinion that such fact is not proved.

CHAPTER II.—OF THE RELEVANCY OF FACTS.

7. Parties to any suit or proceeding may, subject to the provisions of this Act, give evidence for and against such facts as are hereinafter declared to be relevant and no others.

8. Every fact in issue, and every incident connected with any such fact which took place at its occurrence, is relevant.

Illustration.

(a) A is tried for the murder of B by beating him with a club with the intention of causing his death. B claims to be tried.

The following facts are in issue--

- A's beating B with the club.
- A's causing B's death by such beating.
- A's intention to cause B's death.

Whatever was done or said by A or B, or the bystanders immediately before, during, or immediately after, the beating of B by A, are relevant facts.

Explanation.—This section shall not enable any person to give evidence of any fact which he is disentitled to prove by any provision of the law for the time being relating to Civil Procedure.

Illustration.

(b.) A, a suitor, does not bring with him and have in readiness for production at the first hearing a bond on which he relies. This section does not enable him to produce the bond or prove its contents at a subsequent stage of the proceedings.

Collateral facts relevant to the issue.

9. Facts which, though not in issue, are so connected with facts in issue as to form part of the same transaction, are relevant.

Facts forming part of same transaction.

Illustrations.

(a.) A sues B for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose are relevant facts, though they do not contain the libel itself.

(b.) The question is whether certain goods ordered from B were delivered to A. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.

10. Facts which are the occasion, cause, or effect of facts in issue or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction are relevant.

Facts which are occasion, cause, or effect of facts in issue.

Illustrations.

(a.) The question is whether A robbed B.

The facts that shortly before the robbery B went to a fair with money in his possession, and that he showed it, or mentioned the fact that he had it, to third persons, are relevant.

(b.) The question is whether A murdered B.

Marks on the ground produced by a struggle at or near the place where the murder was committed are relevant facts.

(c.) The question is whether A poisoned B.

The state of B's health before the symptoms ascribed to poison and habits of B, known to A, which afforded an opportunity for the administration of poison are relevant facts.

11. Any fact which shows or constitutes a motive or preparation for any fact in issue, or previous or subsequent conduct influenced by any fact in issue, is relevant.

Motive, preparation and subsequent conduct.

Illustrations.

(a.) A is tried for the murder of B.

The facts that, twenty years before A murdered C, that B knew that A had murdered C, and that B had tried to extort money from A by threatening to make his knowledge public, are relevant.

(b.) A sues B upon a bond for the payment of money. B denies the making of the bond.

The fact that, at the time when the bond was alleged to be made, B required money for a particular purpose, is relevant.

(c.) A is tried for the murder of B by poison.

The fact that, before the death of B, A procured poison similar to that which was administered to B, is relevant.

(d.) The question is whether a certain document is the will of A.

The facts that, not long before the date of the alleged will, A made inquiry into matters to which the provisions of the alleged will relate, that he consulted vakils in reference to making the will, and that he caused drafts of other wills to be prepared of which he did not approve, are relevant.

(e.) A is accused of a crime.

The facts that, after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.

(f.) The question is whether A was ravished.

The fact that, shortly after the alleged rape, she made a complaint relating to the crime, the circumstances under which the complaint was made, and the terms in which it was made, are relevant.

(g.) The question is whether A was robbed.

The fact that, soon after the alleged robbery, he made a complaint relating to the offence, the circumstances under which, and the terms in which, it was made, are relevant.

(h.) A is accused of a crime.

The facts that, either before, or at the time of, or after the alleged crime, A provided evidence which would tend to give to the facts in issue an appearance favourable to himself, or that he destroyed or concealed evidence, or prevented the presence or procured the absence of persons who might have been witnesses, or suborned persons to give false evidence respecting it, are relevant.

12. Facts which explain or introduce relevant facts, or which rebut an inference suggested by a relevant fact, are relevant in so far as they are necessary for that purpose.

Facts necessary to explain or introduce relevant facts.

Illustrations.

(a.) The question is whether a given document is the will of A.

The state of A's property and of his family at the date of the alleged will may be relevant facts.

(b.) A sues B for a libel imputing disgraceful conduct to A. B affirms that the matter alleged to be libellous is true.

The position and relations of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue.

The particulars of a dispute between A and B about a matter unconnected with the alleged libel are irrelevant, though the fact that there was a dispute may be relevant if it affected the relations between A and B.

(c.) A is accused of a crime.

The fact that, soon after the commission of the crime, A absconded from his home, is relevant, under section eleven, as conduct subsequent to and affected by facts in issue.

The fact that, at the time when he left home, he had sudden and urgent business at the place to which he went, is relevant as tending to explain the fact that he left home suddenly.

The details of the business on which he left are not relevant, except in so far as they are necessary to show that the business was sudden and urgent.

13. Where several persons conspire together to commit an offence or an actionable wrong, any thing said, done or written by any such person in furtherance of their common intention after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons so conspiring.

Things said or done by conspirator in furtherance of common design.

such person in furtherance of their common intention after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons so conspiring.

Explanation.—Such facts may also be relevant upon the question of the existence of the conspiracy itself.

Illustrations.

(a.) A conspires to wage war against the Queen.

The facts that a conspiracy to wage war against the Queen existed in which A, B, C, D, E, F, G and others were parties; that, in furtherance of the conspiracy, B procured arms in Europe, C collected money in Calcutta, D persuaded persons to join the conspiracy in Bombay, E published writings advocating the object in view at Agra, and F transmitted from Delhi to G at Calcutta the money which C had collected at Calcutta, are each relevant as against A, upon proof that he was a party to the conspiracy, although he may have been ignorant of all of them, and although the persons by whom they were done were strangers to him.

(b.) A sues B for conspiring with C, D and E to injure A's credit.

The facts that C caused articles to be inserted in a newspaper reflecting on A's credit, that D spread a report that A was insolvent, and that E tried to dissuade a banker from lending A money, are relevant, as tending to show acts done by conspirators in furtherance of a common intent.

Facts inconsistent with relevant facts, or making their existence morally certain.

14. Facts not otherwise relevant are relevant—

(1) if they are inconsistent with any relevant fact;

(2) if they are inconsistent with any relevant fact, except upon a supposition the truth of which, in the opinion of the Court, is highly improbable in itself or ought to be proved by the party against whom such facts are alleged;

(3) if by themselves or in connection with other facts they make the existence or non-existence of any relevant fact morally certain.

Illustrations.

(a.) The question is whether A committed a crime at Calcutta on a certain day.

The fact that on that day A was at Lahore is relevant.

The fact that at the time when the crime was committed A was at such a distance from the place where it was committed that he could not by the use of ordinary means of locomotion have reached the place at the time, is relevant if the Court thinks, under the circumstances of the case, that it is highly improbable, or that the prosecution ought to prove that extraordinary means of locomotion were at A's disposal.

(b.) The question is whether A committed a crime.

The circumstances are such that the crime must have been committed either by A, B, C or D. Every fact which shows that the crime could have been committed by no one else, or that it was not committed by either B, C or D is relevant.

15. In suits in which damages are claimed, any fact which will enable the Court to determine the amount of damages which ought to be awarded is relevant.

In suits for damages, evidence may be given of facts tending to determine amount.

16. Where the question is as to the existence of any right or of any custom the following facts are relevant—

Facts relevant when right or custom is in question.

(a.) Any transaction by which the right in question was created, modified, recognised or denied, or which was inconsistent with its existence.

(b.) Particular instances in which the right in question was exercised, or in which its exercise was prevented as of right.

(c.) Particular instances in which the custom in question was recognised or departed from.

Illustrations.

(a.) The question is whether certain lands belong to A.

Transfers of the land from one person to another and finally to A are relevant facts.

(b.) The question is whether a horse belongs to B, the executor of A, or to C who is in possession of it.

The fact that A gave the horse to C in A's lifetime is relevant.

17. Facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill-will or good-will towards any particular person, or showing the existence of any state of body or bodily feeling, are relevant, when the existence of any such state of mind or body or bodily feeling, is relevant:

Facts showing existence of state of mind, or of body or bodily feeling.

Provided that no party to any proceeding shall be permitted to prove any statement made by himself for the

Proviso.

purpose only of proving any state of his own mind, or any feeling of his own body, unless such statement was accompanied, either by contemporaneous conduct on his part which it explains, or by contemporaneous circumstances which render its falsehood improbable, and unless it was made at or about the time when such state of mind or bodily feeling existed.

Illustrations.

(a.) A is accused of receiving stolen goods knowing them to be stolen. It is proved that he was in possession of a particular stolen article.

The fact that at the same time he was in possession of many other stolen articles is relevant, as tending to show that he knew each and all of the articles of which he was in possession to be stolen.

(b.) A is accused of fraudulently delivering to another person a piece of counterfeit coin which, at the time when he became possessed of it, he knew to be counterfeit.

The fact that at the time of its delivery he was possessed of a number of other pieces of counterfeit coin is relevant.

(c.) A sues B for damage done to A by a dog of B's, which B knew to be ferocious.

The facts that the dog had previously bitten X, Y and Z, and that they had made complaints to B, are relevant.

(d.) The question is whether A, the acceptor of a bill of exchange, knew that the name of the payee was fictitious.

The fact that A had accepted other bills drawn in the same manner before they could have been transmitted to him by the payee if the payee had been a real person is relevant, as showing that A knew that the payee was a fictitious person.

(e.) A is accused of defaming B by publishing an imputation intended to harm the reputation of B.

The fact of previous publications by A respecting B, showing ill-will on the part of A towards B, is relevant, as proving A's intention to harm B's reputation by the particular publication in question.

The facts that there was no previous quarrel between A and B, and that A repeated the matter complained of as he heard it, are relevant, as showing that A did not intend to harm the reputation of B.

(f.) A is sued by B for fraudulently representing to B that C was solvent, whereby B, being induced to trust C who was insolvent, suffered loss.

The fact that at the time when A represented C to be solvent, C was supposed to be solvent by his neighbours and by persons dealing with him is relevant, as showing that A made the representation in good faith.

(g.) A is sued by B for the price of work done by B upon a house of which A is owner by the order of C, a contractor.

A's defence is that credit was given to C.

The fact that A paid C for the work in question is relevant, as proving that A did, in good faith, make over to C the management of the work in question, so that C was in a position to contract with B on C's own account, and not as agent for A.

(h.) A is accused, under section 403 of the Indian Penal Code, of the dishonest misappropriation of property which he had found, and the question is whether, when he appropriated it, he did in good faith believe that the real owner could not be found.

The fact that public notice of the loss of the property had been given in the place where A was is relevant, as showing that A did not in good faith believe that the real owner of the property could not be found.

The fact that A knew or had reason to believe that the notice was given fraudulently by C, who had heard of the loss of the property and wished to set up a false claim to it, is relevant, as showing that the fact that A knew of the notice did not disprove A's good faith.

(i.) The question is whether A has been guilty of cruelty towards B, his wife.

Expressions of their feelings towards each other shortly before or after the alleged cruelty, are relevant facts.

(j.) The question is whether A's death was caused by poison. Statements made by A during his illness as to his symptoms, are relevant facts.

(k.) The question is what was the state of A's health at the time when an assurance on his life was effected.

Statements made by A as to the state of his health at or near the time in question, are relevant facts.

(l.) A is accused of defaming B by publishing an imputation intended to harm his reputation.

A may not prove previous statements of his own that he did not wish to harm B's reputation made in ordinary conversation.

(m.) In the last illustration, A might prove that he wrote a letter to the Editor of a newspaper to whom he sent the matter complained of, requesting him not to publish the matter complained of if he thought it would harm B's reputation.

18. When there is a question whether an act was accidental or intentional, the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

Act forming part of series of occurrences.

Illustrations.

(a.) A is accused of burning down his house in order to obtain money for which it is insured.

The facts that A lived in several houses successively, each of which he insured, in each of which a fire occurred, and after each of which fires A received payment from a different insurance office, are relevant, as tending to show that the fires were not accidental.

(b.) A is employed to receive money from the debtors of B. It is A's duty to make entries in a book showing the amounts received by him. He makes an entry showing that on a particular occasion he received less than he really did receive.

The question is whether this false entry was accidental or intentional.

The fact that other entries made by A in the same book are false, and that the false entry is in each case in favour of A, are relevant.

(c.) A is accused of fraudulently delivering to B a counterfeit rupee.

The question is whether the delivery of the rupee was accidental.

The facts that soon before or soon after the delivery to B, A delivered counterfeit rupees to C, D and E are relevant, as showing that the delivery to A was not accidental.

19. When there is a question whether a particular act was done, the existence of any course of business according to which it naturally would have been done is a relevant fact.

Course of business when relevant.

Illustration.

(a.) The question is whether a particular letter was despatched.

The facts that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that that particular letter was put in that place, are relevant.

Character when relevant.

20. In civil cases, the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him, is irrelevant, except in so far as such character appears from facts otherwise relevant.

In civil cases, character to prove conduct imputed irrelevant.

in so far as such character appears from facts otherwise relevant.

21. In criminal proceedings, the fact that the person accused is of a good character, is relevant.

In criminal cases, previous good character relevant.

22. In criminal proceedings, the fact that the accused person has been previously convicted of any offence is relevant, but the fact that he has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.

Previous conviction in criminal trials relevant, but not previous bad character, except in reply.

Explanation.—This section does not apply to cases in which the bad character of any person is itself a fact in issue.

23. In civil cases, the fact that the character of any person was such as to affect the amount of damages which he ought to receive, is relevant.

Character as affecting damages.

Explanation.—In sections twenty, twenty-one, twenty-two and twenty-three, the word 'character' includes both reputation and disposition.

24. In trials for rape, or attempts to commit rape, the fact that the woman on whom the alleged offence was committed is a common prostitute, or that her conduct was generally unchaste, is relevant.

Character for chastity in trials for rape.

Admissions when relevant.

25. An admission is a statement, oral or documentary, which suggests any inference as to any relevant fact, and which is made by any person included in any of the classes hereinafter mentioned.

Admissions defined.

(a.) Parties to the proceeding.

(b.) Agents to such parties whom the Court regards, under the circumstances of the case, as expressly or impliedly authorized by them to make admissions.

(c.) Persons who have any interest in the subject-matter of the proceeding, and who make the statement in their character of persons so interested.

(d.) Persons from whom the parties to the suit have derived their interest in the subject-matter of the suit.

(e.) Third persons whose position or liability it is necessary to prove, as against any party to the suit, when the admission would be relevant as against such persons in relation to such position or liability in a suit brought by or against them.

Illustration.

A undertakes to collect rents for B.

B sues A for not collecting rent due from C to B.

A denies that rent was due from C to B.

A statement by C that he owed B rent is an admission, and is a relevant fact as against A, if A denies that C did owe rent to B.

(f.) Third persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute. No inference from such an admission is necessary.

(g.) Conspirators in relation to any matter connected with their common intention.

Explanation 1.—The interest referred to in (d) must be derived from, and not merely subsequent to, that of the person making the admission. Otherwise the statement is not an admission.

Explanation 2.—Statements made by members of the classes c, d or e, are not admissions, unless they were made during the existence of their respective interests in the matter to which such statements relate.

Explanation 3.—Statements made by parties to suits sued in a representative character are not admissions, unless they were made while the party making them held that character.

Explanation 4.—Admissions as to the contents of documents are not relevant, unless and until the party proposing to prove them shows that he

is entitled to give secondary evidence of the contents of such documents under the rules hereinafter contained.

Exception.—In civil cases, no admission is relevant if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the Court can infer that it was the intention of the parties that evidence of it should not be given.

26. Admissions are relevant facts only as against the person who denies the inference which they suggest. They are not relevant on behalf of the person who asserts the truth of such inference.

Illustration.

A, a party to a suit, says that a certain deed is forged.

This is relevant as an admission if A maintains that the deed is not forged, but is irrelevant if A maintains that the deed was forged.

27. The conduct of any party to any proceeding upon the occasion of anything being done or said in his presence in relation to matters in question, and the things so said or done, are relevant facts, when they render probable or improbable any relevant fact alleged or denied in respect of the person so conducting himself.

Illustrations.

(c.) The question is whether A robbed B.

The facts that, after B was robbed, C said in A's presence—"the police are coming to look for the man who robbed B,"—and that immediately afterwards A ran away, are relevant.

(h.) The question is whether A owes B rupees 10,000.

The facts that A asked C to lend him money, and that D said to C in A's presence and hearing—"I advise you not to trust A, for he owes B 10,000 rupees,"—and that A went away without making any answer, and did not renew his request to C, are relevant facts.

28. An admission made by an accused person is irrelevant in a criminal proceeding if the making of the admission appears to the Court to have been caused by any inducement, threat, or promise, having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that he would gain any advantage or avoid any evil in reference to the proceedings against him by making it.

29. If such an admission is made after the impression caused by any such inducement, threat, or promise has, in the opinion of the Court, been fully removed, it is relevant.

30. If such an admission is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make

such confession, and that evidence of it might be given against him.

31. Whenever evidence is given of a statement containing an admission, evidence must be given of the whole statement, in so far as it relates to the matter in question.

32. Where the statement containing the admission forms part of a conversation or part of an isolated document, or is contained in a document which forms part of a book, or of a connected series of letters or papers, evidence shall be given of so much and no more of the conversation, document, book, or series of letters or papers as the Court considers necessary in that particular case to the full understanding of the nature and effect of the alleged admission, and of the circumstances under which it was made.

Judgments in other suits when relevant.

33. The existence of any judgment, order or decree which, under any provision of the Codes of Civil or Criminal Procedure, prevents any Court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is whether such Court ought to take cognizance of such suit, or to hold such trial.

34. Any judgment, order or decree of any competent Court in the exercise of probate, matrimonial, Admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is a relevant fact when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

It is a necessary inference from the existence of any such order, judgment or decree that any legal character which it confers accrued at the time when such judgment, order or decree came into operation;

that any legal character to which it declares any such person to be entitled accrued to that person at the time when such judgment declares it to have accrued to that person;

that any legal character which it takes away from any such person ceased at the time from which such judgment declared that it had ceased or should cease;

and that any thing to which it declares any person to be so entitled was the property of that person at the time from which such judgment declares that it had been or should be his property.

35. Judgments, orders or decrees other than those mentioned in section thirty-four, made in suits between persons other than parties or those through whom they claim or between a party to the suit, and any person who is not a party or

the representative in interest of a party, are irrelevant, unless they relate to matters of a public nature, in which case they are relevant, though no inference from them is necessary, or unless the fact that there was such a judgment between such parties, is relevant under some other provision of this Act as to the relevancy of facts.

Illustrations.

(a.) A and B separately sue C for a libel which reflects upon each of them. C in each case says, that the matter alleged to be libellous is true, and the circumstances are such that it is probably true in each case, or in neither.

A obtains a decree against C for damages on the ground that C failed to make out his justification. The fact is irrelevant as between B and C.

(b.) A sues B for trespass on his land. B alleges the existence of a public right of way over the land, which A denies.

The existence of a decree in favour of the defendant in a suit by A against C for a trespass in the same place in which C alleged the existence of the same right of way, is relevant, but the inference that the right of way exists is not necessary.

(c.) A has obtained a decree for the possession of land against B. C, B's son, murders A in consequence.

The existence of the judgment is relevant, as showing motive for a crime.

36. Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under sections thirty-three, thirty-four or thirty-five, and which has been proved by the adverse party, was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion.

Fraud, collusion and incompetency of court may be proved.

Statements of third persons when relevant.

37. Statements, written or verbal, made by any person about any relevant fact are themselves relevant facts, if it appears to the Court from the circumstances of the case that the person making such statements had special means of knowing the truth of that which he asserted, and special motives for not making a false assertion on the subject, and if such statements are corroborated by the conduct of the person making them, or if they refer to facts which are independently proved to be true.

Acts other than statements, done by any person which render probable the existence of any relevant fact are themselves relevant.

Illustrations.

(a.) A is accused of murder.

The facts that, soon after the murder, A's mother was seen washing A's clothes and heard to tell A's father that A had told her do so in order to get out stains of blood upon them, is relevant.

(b.) A is accused of stealing rupees. The facts that A's intimate friend was heard to say to A's wife,—‘A has given me these rupees for you and says you are to hide them,’—and was seen at the same time to give her a bag of rupees, are relevant.

(c.) The question is whether a ship was seaworthy when she sailed on a certain voyage.

The facts that the captain, after carefully examining the ship, wrote a letter to his wife saying that he was satisfied of the ship's seaworthiness, and that he afterwards embarked upon the ship with his wife and children, and with property which he did not insure, are relevant.

The washing of the clothes in illustration (a), the acceptance and delivery of the bag of rupees in illustration (b), and the examination of the ship by the Captain and his embarkation on her in illustration (c), would be relevant whether any statement was made or not.

38. Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose

When statement by person who is dead, or cannot be found, &c., is relevant.

attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:—

(1.) When the statement is made by a person, since dead, as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

(2.) When the statement was made by such person in the ordinary course of business, and in particular when it consisted of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of acknowledgments written or signed by him of the receipt of money, goods, securities or property of any kind; or of documents used in commerce written or signed by him, or of the date of a letter or other document usually dated, written or signed by him.

(3.) When the statement gives the opinion of any such person, as to the existence of any public right or custom or matter of general interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter had arisen.

(4.) When the statement relates to the existence of any relationship between persons as to whose relationship the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

(5.) When the statement relates to the existence of any relationship between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

(6.) When the statement is contained in any deed, will or other document which relates to any such transaction as is mentioned in section sixteen, clause (a).

Illustrations.

(a.) The question is whether A was murdered by B.

A dies of injuries received in a transaction in the course of which she was ravished. The question is whether she was ravished by B.

The question is whether A was killed by B under such circumstances that a suit would lie against B by A's widow.

Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape, and the actionable wrong under consideration are relevant facts.

(b.) The question is the date of A's birth.

An entry in the diary of a deceased surgeon, regularly kept in the course of business, stating that, on a given day, he attended A's mother and delivered her of a son, is a relevant fact.

(c.) The question is whether A was in Calcutta on a given day.

A statement in the diary of a deceased solicitor, regularly kept in the course of business that, on a given day, the solicitor attended A at a place mentioned in Calcutta for the purpose of conferring with him upon specified business, is a relevant fact.

(d.) The question is whether a ship sailed from Bombay harbour on a given day.

A letter written by a deceased member of a merchant's firm by which she was chartered, to their correspondents in London to whom the cargo was consigned, stating that the ship sailed on a given day from Bombay harbour, is a relevant fact.

(e.) The question is whether A, a person who cannot be found, wrote a letter on a certain day. The fact that a letter written by him is dated on that day, is relevant.

(f.) The question is what was the cause of the wreck of a ship.

A protest made by the captain whose attendance cannot be procured, is a relevant fact.

(g.) The question is whether a given road is a public way.

A statement by A, a deceased headman of the village that the road is public, is a relevant fact.

(h.) The question is what was the price of grain on a certain day in a particular market. A statement of the price made by a deceased banya in the ordinary course of his business, is a relevant fact.

(i.) The question is whether A, who is dead, was the father of B.

A statement by A that B was his son, is a relevant fact.

(j.) The question is what was the date of the birth of A.

A letter from A's deceased father to a friend announcing the birth of A on a given day, is a relevant fact.

(k.) The question is whether, and when, A and B were married.

An entry in a memorandum book by C, the deceased father of B, of his daughter's marriage with A at a given date, is a relevant fact.

39. Any entry in any public or other official

Entry in public record, made in performance of duty enjoined by law when relevant.

book, register, or record, stating a relevant fact and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register, or record is kept, is itself a relevant fact.

40. Statements of relevant facts made in published maps or charts, or in

Maps and plans when relevant.

maps or plans made under the authority of Government, as to matters usually represented or stated in such maps, charts or plans, are themselves relevant facts: Provided that such maps, charts and plans were not made with reference to the proceeding in which they are to be proved.

41. Evidence given by a witness in a judicial

Evidence in a former judicial proceeding when relevant.

proceeding, or before any person authorised by law to take it, is relevant in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable:

Provided that the proceeding was between the same parties or their representatives in interest;

that the adverse party in the first proceeding had the right to cross-examine;

that the questions in issue were substantially the same in the first as in the second proceeding.

Explanation.—A criminal trial or enquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section, and an enquiry before a Magistrate shall be deemed to be an earlier stage of a judicial proceeding, of which the trial before the Magistrate or the Court of Session are the later stages.

42. When the Court has to form an opinion

Statement as to fact of public nature contained in any Act or Notification of Government, when relevant.

as to the existence of any fact of a public nature, any statement of it, made in a recital contained in any Act of the Governor General of India in Council, or of the Governors in Council of Madras or Bombay, or of the Lieutenant-Governor in Council of Bengal, or in a notification of the Government appearing in the *Gazette of India*, or in the *Gazette* of any Local Government, or in any printed paper purporting to be the Government Gazette of any colony or possession of the Queen, is a relevant fact.

43. When the Court has to decide whether or

Statements in newspapers as to public meeting, when relevant.

not a public meeting or public proceeding was held or took place, any statement made by any newspaper that it did take place, is a relevant fact; but statements made by newspapers as to what passed at any such meeting or public proceeding, are irrelevant.

Opinions of third persons when relevant.

44. When the Court has to form an opinion

upon a point of foreign law, science or art, in order to determine any question before it, the opinions upon that point of persons specially skilled in such foreign law, science or art, are relevant facts.

Such persons are called experts.

Illustrations.

(a.) The question is whether the death of A was caused by poison.

The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.

(b.) The question is whether A, at the time of doing a certain act, was by reason of unsoundness of mind incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.

The opinions of experts upon the question whether the symptoms exhibited by A are ordinary symptoms of unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.

(c.) The question is whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A.

The opinions of experts on the question whether the two documents were written by the same or by different persons are relevant.

45. Facts not otherwise relevant are relevant

Facts bearing upon opinions of experts.

if they support or are in inconsistent with the opinions of experts.

Illustrations.

(a.) The question is whether A was poisoned by a certain poison.

The fact that other persons who were poisoned by that poison exhibited certain symptoms which experts affirm or deny to be the symptoms of that poison, is relevant.

(b.) The question is whether an obstruction to a harbour is caused by a certain sea wall.

The fact that other harbours similarly situated in other respects, but where there were no such sea walls, began to be obstructed at about the same time, is relevant.

46. When the Court has to form an opinion

Opinion as to handwriting.

as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.

Explanation.—A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when in the ordinary course of business documents purporting to be written by that person have been habitually submitted to him.

Illustration.

The question is whether a given letter is in the handwriting of A, a merchant in London.

B is a merchant in Calcutta, who has written letters addressed to A and received letters purporting to be written by him. C is B's clerk, whose duty it was to examine and file B's correspondence. D is B's broker, to whom B habitually submitted the letters purporting to be written by A for the purpose of advising with him thereon.

The opinions of B, C and D on the question whether the letter is in the handwriting of A are relevant, though neither B, C or D ever saw A write.

47. When the Court has to form an opinion as to the existence of any general custom or right, the opinions, as to the existence of such custom or right, of persons who would be likely to know of its existence if it existed, are relevant.

Explanation.—The expression 'general custom or right' includes rights common to any considerable class of persons.

Illustration.

The right of the villagers of a particular village to use the water of a particular well is a general right within the meaning of this section.

Opinions as to usages, tenets, &c., when relevant.

the usages and tenets of any body of men or family,

the constitution and government of any religious or charitable foundation, or

the meaning of words or terms used in particular districts or by particular classes of people,

the opinions of persons having special means of knowledge thereon, are relevant facts.

49. When the Court has to form an opinion as to the relationship of one person to another, the opinion expressed by conduct as to the existence of such relationship of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact: Provided that such opinions shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act.

Illustrations.

(a.) The question is whether A and B were married.

The fact that they were usually received and treated by their friends as husband and wife, is relevant.

(b.) The question is whether A was the legitimate son of B. The fact that A was always treated as such by members of the family, is relevant.

50. Whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant.

Grounds of opinion when relevant.

Illustration.

An expert may give an account of experiments performed by him for the purpose of forming his opinion.

PART II.

OF PROOF.

CHAPTER III.—FACTS WHICH NEED NOT BE PROVED.

No evidence required of relevant fact judicially noticed.

51. No evidence need be given of any relevant fact of which the Court will take judicial notice.

Facts of which Court must take judicial notice.

52. The Court shall take judicial notice of the following facts:—

(1.) All laws or rules having the force of law now or heretofore in force in any part of British India:

(2.) All public Acts of the Parliament of the United Kingdom of Great Britain and Ireland, and all local and personal Acts directed by such Parliament to be judicially noticed:

(3.) Articles of War for Her Majesty's Army or Navy:

(4.) The course of proceeding of the said Parliament and of the Councils for the purpose of making Laws and Regulations established under the Indian Councils' Act, or any other law for the time being relating thereto:

(5.) The accession and the sign manual of the Sovereign for the time being of the United Kingdom of Great Britain and Ireland:

(6.) All seals of which English Courts would take judicial notice. The seals of all the Courts of British India, and of all Courts out of British India, established by the authority of the Governor General in Council:

(7.) The accession to office, names, titles, functions, and signatures of the persons filling for the time being any public office in any part of British India, if the fact of their appointment to such office is notified in the *Gazette of India*, or in the official *Gazette* of any Local Government:

(8.) The existence, title, and national flag of every state or Sovereign recognized by the British Crown:

(9.) The seals of Courts of Admiralty and Maritime Jurisdiction and of Notaries Public:

(10.) The divisions of time, the geographical divisions of the world and public festivals, fasts and holidays notified in the official *Gazette*:

(11.) The territories under the dominion of the British Crown:

(12.) The commencement, continuance, and termination of hostilities between Her Majesty and any other State or body of persons:

(13.) The names of the members and officers of the Court, and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates, attorneys, proctors, vakils, pleaders and other persons authorised by law to appear or act before it:

(14.) And in the Presidency Towns and Military Cantonments, the rule of the road.

In all these cases, and also on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference.

If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do

so, unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

53. No fact need be proved in any proceeding

Facts admitted.

which the parties thereto or their agents agree to admit at the hearing, or which they agree to admit before the hearing, by any writing under their hands: Provided that, when admissions are made in proceedings under the Code of Criminal Procedure, the Court may in its discretion require the facts admitted to be proved otherwise than by such admissions.

CHAPTER IV.—OF PRIMARY AND SECONDARY EVIDENCE.

54. All facts which it is necessary to prove,

Kinds of evidence.

or by documentary, or by material evidence, and such evidence may be either primary or secondary.

55. Oral evidence is primary in relation to all

Oral evidence when primary.

facts other than the existence or contents of any document, or the existence, appearance or condition of any material thing.

56. When the fact to be proved is the existence

Primary evidence as to documents and material things.

or contents of any document, or the existence, appearance or condition of any material thing, the document or material thing itself is primary evidence. An oral description, or a copy of the document or material thing, is secondary evidence.

Explanation.—The word 'copy' includes all documents and all other things which represent to the eye any document or other material thing.

57. When any document or material thing

Documents and material things must be identified.

is produced to the Court, it must be proved to be the document or material thing which it is alleged to be, and if it is a copy, to be a correct copy of that of which it is alleged to be a copy,*except in cases in which the Court is directed or authorised to make any presumption as to any such document.

CHAPTER V.—OF PROOF BY ORAL EVIDENCE.

58. Oral evidence must in all cases whatever be direct. That is to say—

Oral evidence to be direct.

If the fact to be proved is one which could be seen, it must be proved by the evidence of a witness who says that he saw it;

If the fact to be proved is one which could be heard, it must be proved by the evidence of a witness who says that he heard it:

If the fact to be proved is one which could be perceived by any other sense, it must be proved by the evidence of a witness who says that he perceived it by that sense.

This section applies equally to cases in which oral evidence is primary and to cases in which it is secondary, to the proof of facts in issue and to the proof of collateral facts.

59. If the fact to be proved is the opinion of any person whose opinion is declared to be a relevant fact by sections forty-four, forty-six, forty-seven or forty-eight, respectively,

Opinions of experts and others, and the grounds on which they are held, must be proved by their own statements.

or if the fact to be proved is the ground on which any such opinion is held by any such person,

the existence of such opinion and the fact that it is held on such ground must be proved by the evidence of the person himself that he holds that opinion on that ground:

Provided that, if the opinion is relevant under section forty-four, and was expressed in any published treatise, and if the person expressing it is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable, such opinion, and the grounds on which it was or is entertained, may be proved by the production of such treatise.

CHAPTER VI.—OF PROOF BY DOCUMENTARY EVIDENCE.

60. When the existence, condition, or contents of any document are to be proved, they must be proved by primary evidence, except in the following cases:—

Primary evidence to be given to prove contents, &c., of documents, except in certain cases.

(a.) When the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved, or of any person out of reach of or not subject to the process of the Court, or of any person not legally bound to produce it, and when, after the notice mentioned in section sixty-one, such person does not produce it.

(b.) When the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time.

(c.) When the original is a record or other document in the custody of a public officer.

(d.) When the original is a document of which a certified copy is permitted by this Act or by any other law in force in British India to be given in evidence.

(e.) When the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

(f.) When the original is of such a nature as not to be easily moveable.

In cases (a), (b) and (f), secondary evidence of the contents of the document is admissible:

In cases (c) or (d), a certified copy of the document is admissible.

In case (e) evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

61. Secondary evidence of the contents of the documents referred to in section sixty (a) shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, such notice to produce it as is prescribed by law; and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case:

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases:—

(1.) When the secondary evidence proposed to be given is a duplicate original, or a counterpart executed by the adverse party.

(2.) When the document to be proved is itself a notice.

(3.) When from the nature of the case, the adverse party must know that he will be required to produce it.

(4.) When it appears or is proved that the adverse party has obtained possession of the original by fraud or force.

(5.) When the adverse party or his agent has the original in Court.

(6.) When the adverse party or his agent has admitted the loss of the document.

The Court may, whenever it thinks fit, excuse the giving of the notice mentioned in this section.

62. If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

63. If a document is required by law to be attested, it shall not be used as evidence until the fact of its execution has been proved by one attesting witness at least, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence.

An attested document not required by law to be attested may be proved as if it was unattested.

64. If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.

65. The admission of a party to an attested document of its execution by himself shall be a relevant fact as against him, though it be a document required by law to be attested.

66. If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.

67. In order to ascertain whether a signature, writing, or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words and figures so written with any words or figures alleged to have been written by such person.

68. Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court shall presume that the signature and every other part of such document which purports to be in the handwriting of any particular person is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

Explanation.—Documents are said to be in proper custody if they are in the place in which and under the care of the person with whom they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

CHAPTER VII.—OF PROOF BY CERTAIN KINDS OF DOCUMENTARY EVIDENCE.

69. The following documents are public documents:—

1. Documents forming the Acts, or records of the Acts—

- (1) of the sovereign authority,
- (2) of official bodies and tribunals, and
- (3) of public officers, legislative, judicial and executive, whether of British India, or of any other part of Her Majesty's dominions, or of a foreign country.

2. Public records kept in British India of private documents.

70. All other documents are private.

71. Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and such copies so certified shall be called certified copies.

72. Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

73. The Court shall presume every document purporting to be a certificate, certified copy, or other document which is by law declared to be admissible as evidence of any particular fact, to be genuine: Provided that such paper is substantially in the form and purports to be executed in the manner directed by law in that behalf. The Court shall also presume that any officer by whom any such paper purports to be signed or certified held, when he signed it, the official character which he claims in such paper.

Presumption as to genuineness of certified copies.

74. Whenever any document is produced before any Court purporting to be a record or memorandum of the evidence or any part of the evidence given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence, and purporting to be signed by any Judge or Magistrate or by any such officer as aforesaid, the Court shall presume—

Presumptions on production of record of evidence.

that the document is genuine, that the statements purporting to be made by the person signing it are true, and that such evidence was duly taken.

75. The Court shall presume that every document called for and not produced after notice to produce was attested, stamped and executed in the manner required by law.

Presumption as to due execution, &c., of documents not produced.

76. The Court shall presume the genuineness of every document purporting to be the *London Gazette*, or the *Gazette of India*, or the Government Gazette of any Local Government, or of any colony, dependency or possession of the British Crown, or to be a newspaper or journal, or to be a copy of a private Act of Parliament printed by the Queen's Printer.

Presumption as to Gazettes.

77. The Court shall presume the genuineness of every book purporting to be printed or published under the authority of the Government of any country, and to contain any of the laws of that country,

Presumption as to collections of laws and reports of decisions.

and of every book purporting to contain reports of decisions of the Courts of such country,

and the Court may infer from the statements contained in such books, or in any books, proved to be usually referred to by the Courts of the country as authoritative, that the laws which they assert to exist do exist.

78. The Court may in its discretion presume that any book to which it may refer for information on matters of public or general interest, and that any published map or chart, the statements of which are relevant facts, and which is produced by its inspection, was written and published by the person, and at the time and place, by whom or at which it purports to have been written or published.

Presumption as to books and maps.

79. The Court shall presume that photographs, machine copies and other representations of material things produced by any process affording a reasonable assurance of

Presumption as to photographs, machine copies and telegraphic messages.

correctness correctly represent their objects, and that a message forwarded from a telegraph office to the person to whom such message purports to be addressed corresponds with a message delivered, or caused to be delivered, for transmission by the person by whom the message purports to be sent.

80. The Court shall presume that maps or plans purporting to be made by the authority of Government were so made, and are accurate; but maps or plans made for the purposes of any cause must be proved to be accurate.

Proof of maps made for purposes of any cause.

81. The Court shall presume that every document purporting to be a power of attorney, and to have been executed before, and authenticated by a notary public, or any Court, Judge, Magistrate, British Consul or Vice-Consul, or representative of Her Majesty or of the Government of India, was so executed and authenticated.

Presumption as to powers of attorney.

82. When any document is produced to any Court purporting to be a document which, by the law in force for the time being in England or Ireland, would be admissible in proof of any particular in any Court of Justice in England or Ireland without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the Court shall presume that such seal, stamp or signature is genuine, and that the person signing it held at the time when he signed it the judicial or official character which he claims,

Presumption as to documents admissible in England without proof of seal or signature.

and the document shall be admissible for the same purpose for which it would be admissible in England or Ireland.

83. The Court may in its discretion presume that any document purporting to be a certified copy of any judicial record of any country not forming part of Her Majesty's dominions is genuine and accurate, if the document purports to be certified in any manner commonly in use in that country for the certification of copies of judicial records.

Presumption as to certified copies of foreign judicial records.

84. An uncertified copy of any judicial record may be produced in order to prove the contents of the record upon proof—

Production of uncertified copies of judicial records.

(1) that the copy produced has been compared by the witness with the original, and is an exact transcript of the whole of it;

(2) that such original was in the custody of the legal keeper of the same; and

(3) if the copy purports to be signed by the legal keeper of the original, or sealed with the seal of the Court, that such signature or seal is genuine.

Proof of other official documents.

85. Other official documents may be proved as follows:—

(1) Acts, orders or notifications of the Executive Government of British India in any of its departments, or of any Local Government or any department of any Local Government,

by the records of the departments, certified by the heads of those departments, respectively,

or by any document purporting to be printed by order of any such Government :

(2.) The proceedings of the legislatures,

by the journals of those bodies respectively, or by published Acts or abstracts, or by copies purporting to be printed by order of Government :

(3.) Proclamations, orders or regulations issued by Her Majesty or by the Privy Council, or by any department of Her Majesty's Government,

by copies or extracts contained in the *London Gazette*, or purporting to be printed by the Queen's Printer :

(4.) The Acts of the executive or the proceedings of the legislature of a foreign country,

by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in some public Act of the Governor General of India in Council :

(5.) The proceedings of a municipal body in British India,

by a copy of such proceedings certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body :

(6.) Documents of any other class,

by the original, or by a copy certified by the legal keeper thereof :

(7.) Documents of any other class in a foreign country,

by the original, or by a copy certified by the legal keeper thereof, with a certificate under the seal of a notary public or of a British Consul or diplomatic agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country.

CHAPTER VIII.—OF MATERIAL EVIDENCE NOT DOCUMENTARY.

86. The existence, appearance and condition of

Evidence of material things not documentary. material things other than documents must be proved by primary evidence ;

but the Court may, if it thinks fit, excuse the production of any material thing other than a document, and admit secondary evidence as to its existence, appearance or condition.

87. When the absence of any material thing

Secondary evidence of such things when producible. other than a document can be accounted for to the satisfaction of the Court, or when its production would be impossible, inconvenient, indecent or repugnant to religious feeling or the custom of the country, secondary evidence may be given of its existence, appearance or condition.

Illustrations.

Secondary evidence may be given of the existence and condition—

of anything shown to have been lost, destroyed or altered, of any immoveable property,

of very large or heavy moveable objects, such as ships, boats or railway carriages,

of a dead body, or of wounds upon a living person,

of idols or other things held sacred.

88. When any material thing other than a

Proof required when material objects other than documents produced for inspection. document is produced for the inspection of any Court, the fact that it is the object, the existence, appearance or condition of which is to be proved, or, if it is a copy or representation, the fact that it represents the original correctly, must be proved.

CHAPTER IX.—OF THE EXCLUSION OF ORAL BY DOCUMENTARY EVIDENCE.

89. When the terms of a contract, or of a grant, or of any other dis-

Evidence of terms of written contract. position of property, other than a testamentary disposition thereof, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Explanation 1.—This section applies equally to cases in which the contracts, grants or disposition of property referred to are contained in one document, and to cases in which they are contained in more documents than one.

Explanation 2.—Where there are more originals than one, one original only need be proved.

Explanation 3.—The statement in any document whatever of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence of the same fact.

Exception.—When the appointment of any public officer is required by law to be made by writing, and when it is necessary to prove that a particular person holds such an appointment, the fact that he acted in that capacity is sufficient proof of his appointment, and his written appointment need not be proved.

Illustrations.

(a.) If a contract be contained in several letters, all the letters in which it is contained must be proved, and no other evidence of its provisions can be given.

(b.) If a contract be contained in a bill of exchange, the bill of exchange must be proved.

(c.) If a bill of exchange is drawn in a set of three, one only need be proved.

(d.) A contracts in writing with B for the delivery of indigo upon certain terms. The contract mentions the fact that B had paid A the price of other indigo contracted for verbally on another occasion.

Oral evidence is offered that no payment was made for the other indigo. The evidence is admissible.

(e.) A gives B a receipt for money paid by B.

Oral evidence is offered of the payment.

The evidence is admissible.

90. When the terms of any such contract,

Exclusion of evidence of oral agreement. grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted as between the parties to any such instrument or their repre-

sentatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:

Provided that, where a suit is instituted for the purpose of setting aside or varying a document on the ground of a mistake in the writing thereof, evidence may be given for the purpose of proving that mistake:

Provided also, that, where a suit is instituted for the specific performance of a written contract, evidence may be given by the defendant for the purpose of showing that such contract is not the contract into which the parties have really entered.

91. Evidence may be given of any of the following facts in relation to any such contract, grant or other disposition of property:—

(1.) Any fact showing to what specific things or persons any description used in the document relates,

(2.) Any fact showing that words, plain in themselves, have several applications, of which one only can have been intended, and any fact showing which of such applications is intended.

But where the words used are in themselves ambiguous, evidence may not be given to show in what sense they were used.

(3.) The fact that any word used in the writing was used in any sense other than the ordinary one.

(4.) The meaning of illegible or not commonly intelligible characters, or of foreign, obsolete, technical, local or provincial expressions.

(5.) Any fact which would invalidate the document, such as forgery of the whole or of any part, fraud, duress, illegality, want of due execution, want of capacity in the contracting party, or want or failure of consideration.

(6.) Any usage or custom by which incidents, not expressly mentioned in any contract, are usually annexed to contracts of that description: Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

Illustrations.

(a.) A agrees to sell to B 'my white horse.'

Evidence may be given to show what particular horse was meant.

(b.) A agrees to accompany B to Hyderabad.

Evidence may be given to show whether Hyderabad in Deccan or Hyderabad in Sindh was the place intended.

(c.) A agrees with B to buy a certain house 'for rupees 1,000 or rupees 1,500.'

Evidence may not be given to show whether the price was to be rupees 1,000 or rupees 1,500.

92. Nothing in this chapter contained shall prevent evidence from being given of—

(1) the existence of any distinct oral agreement on any matter collateral to any such contract, grant or disposition of property;

(2) the existence of any oral agreement constituting a condition on which the performance of any such contract, grant or disposition of property is to depend;

(3) the existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

PART III.

PRODUCTION OF PROOF.

CHAPTER X.—OF THE BURDEN OF PROOF.

93. Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Illustrations.

(a.) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed.

A must prove that B has committed the crime.

(b.) A desires a Court to give judgment that he is entitled to certain land in the possession of B by reason of facts which he asserts and which B denies to be true.

A must prove the existence of those facts.

94. The general burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Illustrations.

(a.) A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C, B's father.

If no evidence were given on either side, B would be entitled to retain his possession.

Therefore the burden of proof is on A.

(b.) A sues B for money due on a bond.

The execution of the bond is not disputed, but B says that it was obtained by fraud, which A denies.

If no evidence were given on either side, A would succeed, as the bond is not disputed and the fraud is not proved.

Therefore the burden of proof is on B.

95. The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

Illustration.

A and B, husband and wife, are both drowned in the same wreck. C is entitled to certain property if B survived A, but not if A survived B. D is entitled to the property if A survived B, but not if B survived A. If C claims the property, he must prove that B survived A. If D claims the property, he must prove that A survived B.

96. The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

Illustrations.

(a.) A wishes to prove a dying declaration by B. A must prove B's death.

(b.) A wishes to prove, by secondary evidence, the contents of a lost document.

A must prove that the document has been lost.

97. When a person is accused of any criminal offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, or within any special exception or proviso contained in any other part of the same Code, is upon him, and the Court shall presume the absence of such circumstances.

Illustrations.

(a.) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act.

The burden of proof is on A.

(b.) A, accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self-control.

The burden of proof is on A.

(c.) Section 325 of the Penal Code provides that whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be subject to certain punishments.

A is charged with voluntarily causing hurt under section 325.

The absence of circumstances bringing the case under section 335 shall be presumed.

98. When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Illustration.

When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

99. When one person has, by his declaration act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, he shall not be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

Illustration.

A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it. The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title.

100. No tenant of immoveable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immoveable property, and no person who came upon any immoveable property by the license of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such license was given.

101. No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill or to endorse it, nor shall any bailee or licensee be permitted to deny that his bailor or licensor had, at the time when the bailment or license commenced, authority to make such bailment or grant such license.

Explanation.—The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn.

102. Where the legitimacy of any person is in question, his legitimacy shall be a necessary inference from the fact that he was born during the existence of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

Illustrations.

(a.) The question is whether A is the legitimate son of B by C, his wife.

Evidence is offered to show that, during the cohabitation of B with C, she committed adultery with D.

The evidence is not admissible.

(b.) Evidence is offered to show that, for a year before the birth of A, B was in India and C in England. Evidence of C's adultery with D is admissible.

(c.) A is born six months after B's death. Evidence is offered to show that, for a year before B's death, B was impotent, and that C committed adultery with D during that period. The evidence is admissible.

103. When it is proved that a person has not been heard of for seven years by the persons who would naturally have heard of him if he had been alive, the Court shall presume that he is dead.

104. When it is proved that persons have been acting as co-partners, or landlord and tenant, the Court shall presume that they have entered into a contract of co-partnership or tenancy, and such co-partnership or tenancy shall be presumed to continue till proved to be dissolved.

CHAPTER XI.—OF WITNESSES.

105. All persons shall be competent to testify, unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease unsoundness of mind, or any other cause of the same kind.

106. A witness, who is unable to speak, may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but the writing must be written and the signs made in open Court. Evidence so given shall be deemed to be oral evidence.

107. In all civil proceedings the parties and their husbands and wives shall be competent witnesses. In criminal proceedings against husbands or wives, the wives or husbands, respectively, shall be competent witnesses.

108. No Judge or Magistrate shall be required without his own consent to give evidence as to what occurred in any proceeding before him in Court.

109. No person, who is or has been married, shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married, nor shall he be permitted to disclose any such communication, unless the person who made it or his representative in interest consents.

110. No one shall be permitted to give any evidence as to evidence as to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

111. No public officer shall be compelled to disclose communications made to him in official confidence, when the public interests would suffer by the disclosure.

112. No Magistrate or police officer shall be compelled to say whence he got any information as to the commission of any offence.

113. No barrister, attorney, pleader or vakil shall be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, attorney or vakil by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment :

Provided that nothing in this section shall protect from disclosure—

(1) any such communication made in furtherance of any criminal purpose ;

(2) any fact, other than those mentioned in the former part of this section, observed by any barrister, attorney or vakil in the course of such employment, whether his attention was or was not directed to such fact by or on behalf of his client.

Illustrations.

(a.) A, a client, says to B, an attorney,—‘I have committed forgery, and I wish you to defend me.’

As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure.

(b.) A, a client, says to B, an attorney,—‘I wish to obtain possession of property by the use of a forged deed on which I request you to sue.’

This communication, being made in furtherance of a criminal purpose, is not protected from disclosure.

(c.) A being charged with embezzlement retains B, an attorney, to defend him. In the course of the proceedings, B observes that an entry has been made in A's account-book charging A with the sum said to have been embezzled, which entry was not in the book at the commencement of the proceedings.

This being a fact observed by B in the course of the proceedings, it is not protected from disclosure.

(d.) An attorney is asked the contents of a deed shown him by his client, or whether it was stamped, or whether it contained erasures.

He must not answer either of these questions without his client's express consent.

He is asked whether the deed produced in Court has been shown him during his employment, and whether it is now in the same state as to stamps, erasures or otherwise, as it was in when he saw it first.

He must answer the question, as it relates to facts observed by him during his employment.

114. If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in the last section, and if any party to a suit or proceeding calls any such barrister, attorney or vakil as a witness, he shall be deemed to have consented to such disclosure only in so far

Waiver of privilege if party volunteers evidence.

as relates to the matters, as to which he requires such barrister, attorney or vakil to testify, and as to such other matters as may appear to the Court necessary to be known in order to the full understanding thereof.

115. No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal professional adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communication as may appear to the Court necessary to be known in order to explain, or to test the truthfulness of any evidence which he has given, but no others.

116. No witness who is not a party to a suit shall be compelled to produce his title-deeds to any property or any document in virtue of which he holds any property as pledgee or mortgagee, or any document the production of which might tend to criminate him, unless he has agreed in writing to produce them with the person seeking the production of such deeds or some person through whom he claims.

117. No one shall be compelled to produce documents in his possession which any other person would be entitled to refuse to produce if they were in his possession, unless such last-mentioned person consents to their production.

118. A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding upon the ground that the answer to such question will criminate, or may tend, directly or indirectly, to criminate such witness, or that it will expose, or tend, directly or indirectly, to expose such witness to a penalty or forfeiture of any kind :

Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.

119. No person charged with an offence shall be a competent witness for or against himself, or for or against any person charged jointly with him.

120. Evidence of the examination before the Magistrate of any accused person or of any confession made by any accused person, which might be proved as against such person, may be given against any person jointly accused with him in reference to the same transaction.

121. In determining whether any one of two or more persons jointly accused of any offence is guilty, the Court may have regard to any statement made by any other such person under the provisions of the law for the time being relating to the examination or addresses to the Court of persons accused.

Examination or confession of accused as against a person jointly accused.

Statement by person jointly accused.

122. An accomplice shall be a competent witness against an accused person.

123. No particular number of witnesses shall in any case be required for the proof of any fact.

CHAPTER XII.—OF THE ADMINISTRATION OF OATHS

124. All witnesses are bound to state the truth in their evidence.

125. The Court shall administer to all witnesses an oath in the following form:—

"I solemnly affirm in the presence of Almighty God that what I shall state shall be the truth, the whole truth, and nothing but the truth."

Except in the following cases:—

(1.) The Court may, in its discretion, permit any witness to omit the words "in the presence of Almighty God" in the said form, and shall do so if it is satisfied that the witness has a conscientious objection to their use, or does not understand them, or regards them as unmeaning or useless.

(2.) If the Court has reason to believe that any witness attaches peculiar sanctity to any form of swearing, and that the employment of such form of swearing would be likely to make him tell the truth, it may employ that form either instead of or in addition to the form above-mentioned, and either in relation to the whole of the witness' evidence, or in relation to such part of it as has reference to any particular fact.

126. All persons who are appointed to act as interpreters or translators by any Court, whether generally or on any particular occasion, shall be deemed to be public servants, and shall well and truly interpret or translate such matters as they shall be required to interpret or translate to the best of their ability; but such persons shall not be sworn to interpret or translate.

CHAPTER XIII.—OF THE EXAMINATION OF WITNESSES.

127. The order in which witnesses are produced and examined shall be regulated as follows:—

(1.) In the High Courts, by the law and practice of those Courts for the time being.

(2.) In proceedings under the Codes of Civil and Criminal Procedure, by the laws for the time being relating to Civil and Criminal Procedure, respectively.

(3.) In other cases, by the discretion of the Court.

128. When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant, and the Judge shall admit the evidence if he thinks that the fact if proved would be relevant and not otherwise.

If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last-mentioned fact must be proved before evidence is given of the fact first-mentioned.

If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may in his discretion either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

Illustrations.

(a.) It is proposed to prove a statement about a relevant fact by a person alleged to be dead, which statement is relevant under section thirty-eight.

The fact that the person is dead must be proved before evidence is given of the statement.

(b.) It is proposed to prove the contents of a document said to be lost by a copy.

The fact that the original is lost must be proved before the copy is produced.

(c.) A is accused of receiving stolen property knowing it to have been stolen.

It is proposed to prove that he denied the possession of the property.

The relevancy of the denial depends on the identity of the property. The Court may in its discretion either require the property to be identified before the denial of the possession is proved, or permit the denial of the possession to be proved before the property is identified.

129. The examination of a witness by the party who calls him shall be called his examination-in-chief.

The examination of the witness by the adverse party shall be called his cross-examination.

The examination, subsequent to the cross-examination by the party who called the witness, shall be called his re-examination.

130. Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.

The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

The re-examination shall be directed to the explanation of matters referred to in cross-examination, and if new matter is introduced in re-examination, the adverse party may further cross-examine upon that matter.

131. A witness called merely to produce a document may be cross-examined by the party who does not call for the document, although such witness gives no evidence in the case.

132. Witnesses to character may be cross-examined and re-examined.

133. Any question suggesting the answer which the person who puts it wishes or expects to receive, is called a leading question.

134. Leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief, or in a re-examination, except with the permission of the Court.

The Court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.

When they may be asked. 135. Leading questions may be asked in cross-examination.

136. Any witness may be asked, whilst under examination, whether any matter as to which he is giving evidence was not stated in a document, and if he says that it was, or if he is about to make any statement as to the contents of any document, or as to any material thing which, in the opinion of the Court, ought to be produced, the adverse party may object to such evidence being given until such document or material thing is produced, or until facts have been proved which entitle the party who called the witness to give secondary evidence of it.

Explanation.—A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant facts.

Illustration.

The question is whether A assaulted B.

C deposes that he heard A say to D—'B wrote a letter accusing me of theft, and I will be revenged on him.' This statement is relevant, as showing A's motive for the assault, and evidence may be given of it, though no other evidence is given about the letter.

137. A witness may be cross-examined as to previous statements made by him in writing or reduced into writing and relevant to matters in question without such writing being shown to him; but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

138. When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to, be asked any questions which tend to test his veracity, or to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him, or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.

139. If any such question relates to a matter relevant to the suit or proceeding, the provisions of section one hundred and eighteen shall apply thereto.

140. If any such question relates to a matter not relevant to the suit or proceeding, except in so far as it affects the credit of the witness by injuring his character, the witness shall not be compelled to answer it, and if he does answer it, or refuses to answer it, no evidence shall be given of any such answer or refusal to answer in any subsequent suit or proceeding, except a criminal prosecution of such witness for giving false evidence by such answer.

141. No such question as is mentioned in section one hundred and forty shall be asked by any barrister, advocate, attorney, pleader or other agent without express written instructions signed by the party on whose behalf he appears, or by the agent of such party.

142. When any such question is asked by any such barrister, attorney, pleader or agent, the Court may, if it thinks fit, require from the person asking it the production of such written authority, and if he does not produce it, or if, when produced, it appears to the Court insufficient to authorize the question asked, the person asking such question shall be deemed to have committed a contempt of Court; but no such barrister, attorney, pleader or agent shall be held to have committed any other offence, or to have subjected himself to any civil proceedings by asking any such questions.

143. The Judge may, if he thinks fit, take possession of such written instructions upon their production and write upon them a memorandum identifying the document as one called for by him under the power hereby conferred upon him, and specifying the time, place and occasion on which, and the person by whom the question suggested in them was asked. The Judge shall sign such memorandum with his name and official title, and deliver the instructions and memorandum to the person of whom the question was asked. Upon the production in any civil or criminal proceeding of any document purporting to be such a document, the Court shall presume that it is genuine, and that the person signing it published the imputation suggested by it with the intention of harming the reputation of the person of whom it was asked.

144. When any such question is asked by any party to any suit or proceeding, the Judge may make a memorandum of the question or questions asked, and the answers given to them, and sign the same and give such memorandum to the witness of whom such question was asked.

145. No such instructions and no such questions shall be deemed to fall within any of the exceptions to section four hundred and ninety-nine of the Indian Penal Code, or to be a privileged communication merely because the instructions were given, or because the question was asked under the provisions of this Act.

146. The Court may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the Court, unless they relate to facts in issue, or to matters absolutely necessary to be known in order to determine whether or not the facts in issue existed.

147. The Court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the Court needlessly offensive in form.

148. When a witness has been asked and has answered any question which is relevant to the inquiry only in so far as it tends to test his veracity or credibility, no evidence shall be given to contradict answers to questions testing veracity; but if he answers falsely, he may afterwards be charged with giving false evidence.

Illustrations.

(a.) A claim against an underwriter is resisted on the ground of fraud.

The claimant is asked whether, in a former transaction, he had not made a fraudulent claim. He denies it.

Evidence is offered to show that he did make such a claim.

The evidence is inadmissible.

(b.) A witness is asked whether he was not dismissed from a situation for dishonesty. He denies it.

Evidence is offered to show that he was dismissed for dishonesty.

The evidence is not admissible.

(c.) A affirms that on a certain day he saw B at Lahore.

A is asked whether he himself was not on that day at Calcutta. He denies it.

Evidence is offered to show that A was on that day at Calcutta.

The evidence is admissible, not as contradicting A on a fact which affects his credit, but as contradicting the alleged fact that B was seen on the day in question in Lahore.

In each of these cases the witness might, if his denial was false, be charged with giving false evidence.

Exception 1.—If a witness is asked whether he has been previously convicted of any crime and does not admit it, evidence may be given of his previous conviction.

Exception 2.—If a witness is asked any question tending to impeach his impartiality and answers it by denying the facts suggested, he may be contradicted.

149. The Court may in its discretion permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.

150. The credit of a witness may be impeached in the following ways by the adverse party, or with the consent of the Court, by the party who calls him:—

(1.) By the evidence of persons who testify that they, from previous knowledge of the witness, believe him to be unworthy of credit.

A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.

(2.) By proof that the witness has been bribed or has had the offer of a bribe, or has received any other corrupt inducement to give his evidence.

(3.) By proof of former statements inconsistent with any part of his evidence which is liable to be contradicted.

Illustrations.

(a.) A sues B for the price of goods sold and delivered to B.

C says that he delivered the goods to B.

Evidence is offered to show that, on a previous occasion, he said that he had not delivered the goods to B.

The evidence is admissible.

(b.) A is indicted for the murder of B.

C says that B, when dying, declared that A had given B wound of which he died.

Evidence is offered to show that, on a previous occasion, he said that the wound was not given by A or in his presence.

The evidence is admissible.

151. When a witness whom it is intended corroborate gives evidence any relevant fact, he may be questioned as to any other fact which he observed at or near to the time or place at which such relevant fact occurred, and the truth of such statements is relevant if the Court is of opinion that proof of them would corroborate testimony of the witness as to the relevant fact to which he testifies.

Illustration.

A, an accomplice, gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed.

Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

152. If evidence is given that a witness has on a former occasion, made a statement inconsistent with his evidence given in Court, evidence may be given, in reply, of any other statement made by such witness relating to the fact in question at or about the time when the fact took place or made at any time before any authority legally competent to investigate the fact.

153. A witness may, while under examination, refresh his memory by reference to any writing made by himself at the time of the transactions concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory.

The witness may also refer to any such writing made by any other person and read by the witness within the time aforesaid if when he read it he knew it to be correct.

Whenever a witness may refresh his memory by reference to any document, the Court may permit a copy of document to be used to refresh memory. The Court may, with the permission of the Court, refer to a copy of such document: Provided the Court be satisfied that there is sufficient reason for the non-production of the original.

An expert may refresh his memory by reference to professional treatises.

154. Any such writing as is mentioned in the last section must be produced and shown to the adverse party if he requires it, who may, if he pleases, cross-examine the witness thereupon.

155. A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production to its admissibility. The validity of any such objection shall be decided on by the Court.

The Court, if it sees fit, may inspect the document, unless it refers to matters of State, or other evidence to enable it to determine its admissibility.

If for such a purpose it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence, and if the interpreter disobeys such direction, he shall be held to have committed an offence under section one hundred and sixty-six of the Indian Penal Code.

156. When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing it requires him to do so.

157. When a party refuses to produce a document which he has had notice to produce, he cannot afterwards give the document as evidence without the consent of the other party or the order of the Court.

Illustration.

A sues B on an agreement and gives B notice to produce it. At the trial, A calls for the document and B refuses to produce it. A gives secondary evidence of its contents. A seeks to produce the document itself to contradict the secondary evidence given by A, or in order to show that the agreement is not stamped. He cannot do so.

158. The Judge may ask any question he pleases in any form at any time of any witness about any fact relevant or irrelevant, or may order the production of any document or thing, and neither the parties nor their agents shall be entitled to make any objection to such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:

Provided that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document which under any provision of this Act he would be entitled to refuse to answer or produce if the question were asked or the document were called for by the adverse party, nor shall it authorize any Judge to dispense with primary evidence of any document, except in the cases hereinbefore excepted.

159. The jury or assessors may put any questions to the witnesses through or by leave of the Judge which the Judge considers proper.

PART IV.

PROCEDURE.

CHAPTER XIV.—OF THE DUTIES OF JUDGES AND JURIES.

160. It is the duty of the Judge to decide all questions of law, and especially all questions as to the relevancy of facts which it is proposed to prove, the admissibility of evidence, or the propriety of questions asked by parties or their agents which may be asked in the course of their trial; and in his discretion to prevent the production of evidence not by declared to be admissible whether it is or not objected to by the parties;

to decide upon the meaning and construction of documents given in evidence at the trial;

to decide upon all matters of fact which it may be necessary to prove in order to enable evidence of particular matters to be given;

to decide whether any question which arises is for himself or for the jury, and upon this point his decision shall be final.

The Judge may, if he thinks proper in the course of his summing up, express to the jury his opinion upon any question of fact, or upon any question of mixed law and fact relevant to the proceeding.

Illustrations.

(a.) It is proposed to prove a statement made by a person not called as a witness under circumstances which render evidence of his statement admissible.

It is for the Judge and not for the jury to decide whether the existence of those circumstances has been proved.

(b.) It is proposed to give secondary evidence of a document, the original of which has been lost or destroyed.

It is the duty of the Judge to decide whether the original has been lost or destroyed.

161. It is the duty of the Judge in criminal cases, if he thinks that the interests of the public require it, not merely to hear and decide or direct the jury, as the case may be, according to the evidence produced before him, but also to inquire to the utmost into the truth of the matters in question; and he shall for that purpose ask all questions and require the attendance of all persons and the production of all documents and things that he considers necessary, whether such questions might be asked, or such persons or things which might be produced by a party to the proceeding or not.

162. Where there is a jury it is the duty of the jury—

(1) to decide upon all questions of fact submitted to them by the Judge at the trial, having regard in such decision to the statement of the law given to them by the Judge;

(2) to determine the meaning of all technical terms and words used in an unusual sense which it may be necessary to determine whether such words occur in documents or not;

(3) to decide all questions declared by the Indian Penal Code, or any other law to be questions of fact;

(4) to decide whether general indefinite expressions do or do not apply to particular cases, unless such expressions refer to legal procedure or unless their meaning is ascertained by law, in either of which cases it is the duty of the Judge to decide their meaning.

Illustrations.

(a.) A is tried for the murder of B.

It is the duty of the Judge to explain to the jury the distinction between murder and culpable homicide, and to tell them under what views of the facts A ought to be convicted of murder, or of culpable homicide, or acquitted.

It is the duty of the jury to decide which view of the facts is true, and to return a verdict in accordance with the direction of the Judge, whether that direction is right or wrong, and whether they do or do not agree with it.

(b.) The question is whether a person entertained a reasonable belief on a particular point. Whether work was done with reasonable skill, or due diligence.

Each of these is a question for the jury.

(c.) The question is whether certain facts constituted probable cause for a prosecution.

This is a question for the Judge. The existence of the facts is a question for the jury.

163. If a juryman or assessor is personally acquainted with any relevant fact, it is his duty to inform the Judge that such is the case, whereupon he may be examined either by the parties or by the Judge, in the same manner as any other witness.

CHAPTER XV.—OF IMPROPER ADMISSION AND REJECTION OF EVIDENCE.

164. The improper admission or rejection of evidence shall not in itself be a ground of regular appeal, but whenever any regular appeal is brought on the ground that the evidence did not warrant

the finding of the Court below, the appellant may contend before the Court of Appeal that it ought not to pay attention to any evidence which such appellant considers to have been improperly admitted by the Court below, or that it ought to admit any evidence which such appellant considers to have been improperly rejected by the Court below. If the Court of Appeal considers that any such evidence was improperly admitted, it shall decide the case without having regard to such evidence. If it considers that any evidence was improperly rejected, it shall admit such evidence, and have regard to it in its decision. No evidence shall be admitted before any Appellate Court which the party tendering it would have been prevented from tendering before the subordinate Court by any provision of the laws for the time being relating to Civil or Criminal Procedure.

165. No special appeal shall lie from the decision of any Court on the ground of the improper admission of evidence; but if any party to a suit considers that any Court from which a special appeal would lie has taken into consideration any evidence which it ought not to have taken into consideration, he may call upon such Court to state in its judgment what its judgment would have been if such evidence had been excluded, and he may on special appeal call upon the High Court to decide whether the judgment actually given or the judgment which would have been given had such evidence been excluded shall stand, and the High Court shall affirm the one or the other judgment according as it thinks that the evidence ought or ought not to have been admitted.

166. Special appeals may be brought on the ground that the inferior Appellate Court has improperly rejected evidence, and if the High Court is of opinion that evidence has been improperly rejected, it may either itself admit such evidence and look into the facts of the case, and deliver final judgment in the case, or remand the case to the inferior Appellate Court with such direction as it thinks fit.

167. Whenever any High Court acting under the powers of revision contained in the Code of Criminal Procedure, is of opinion that any subordinate Court has admitted or has taken into consideration, or has rejected or has failed to call for evidence, which it ought not to have admitted or rejected, or which it ought to have called for, such High Court shall have power to call for any further evidence under section four hundred and twenty-two of the Code of Criminal Procedure, and shall make such final order on the case as it considers just.

168. When any party to any suit objects to the rejection of any documentary or material evidence, he may, upon the rejection of the

evidence, apply to the Court to write upon or attach to such evidence a memorandum that it was tendered and rejected, and the Court shall thereupon write or attach such memorandum upon or to such document or thing, and no appeal shall be brought upon the ground that any documentary or material evidence was rejected; and no such document or thing shall be tendered as evidence before any Appellate Court, unless it was so tendered before the inferior Court, and unless it has such memorandum written upon or attached to it.

169. Nothing in this Act contained shall prevent any Appellate Court from referring to the record of the evidence taken by any inferior Court according to the provisions of any law, or according to any practice now in force.

SCHEDULE.

Number and year.	TITLE.	Extent of repeal.
Stat. 26 Geo. III, C. 57.	For the further regulation of the trial of persons accused of certain offences committed in the East Indies; for repealing so much of an Act, made in the twenty-fourth year of the reign of his present Majesty (intituled, An Act for the better regulation and management of the affairs of the East India Company, and of the British possessions in India, and for establishing a court of judicature for the more speedy and effectual trial of persons accused of offences committed in the East Indies), as requires the servants of the East India Company to deliver inventories of their estates and effects; for rendering the laws more effectual against persons unlawfully resorting to the East Indies; and for the more easy proof, in certain cases, of deeds and writings executed in Great Britain or India.	Section thirty-eight so far as it relates to Courts of Justice in the East Indies.
Stat. 14 & 15 Vic, C. 99.	To amend the Law of Evidence.	Section eleven and so much of section nineteen as relates to British India.
Act V of 1840 ...	An Act concerning the oaths and declarations of Hindoos and Mahomedans.	The whole Act.
Act XV of 1852 ...	To amend the Law of Evidence.	The whole Act.
Act XIX of 1853	To amend the Law of Evidence in the Civil Courts of the East India Company in the Bengal Presidency.	Section nineteen.
Act II of 1855 ...	For the further improvement of the Law of Evidence.	The whole Act.
Act XXV of 1861	For simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter.	Section two hundred and thirty seven.
Act I of 1869 ...	The General Clauses Act, 1869.	Section seven.

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